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<p>1 Castleman, ScD 2 Manufacturers' Association 3 documents, which -- in which OI 4 appears to have been a member and OI 5 people have done things, but I have 6 not shown those documents to him. 7 MR. FISCHER: Okay. 8 Q. Why don't we do this this way, 9 Dr. Castleman: Mr. Walker has asked you to be a 10 witness in the Shipley case; is that your 11 understanding? 12 <b>A. Right.</b> 13 Q. And it has been some time, at least 14 since I have taken your deposition in the case, 15 in which Mr. Walker represented the plaintiffs. 16 Is there anything that Mr. Walker 17 has brought to your attention that he would like 18 you to focus on in the course of your work in 19 this case? 20 <b>A. As to OI, it's not anything in</b> 21 <b>particular, no.</b> 22 Q. And now let me expand it out beyond 23 Owens-Illinois. Is there anything that 24 Mr. Walker brought to your attention that he 25 would like you to be thinking about during the</p>	<p>1 Castleman, ScD 2 24? 3 MR. WALKER: Exhibit No. 824. 4 BY MR. FISCHER: 5 Q. Has Mr. Walker asked you to look at 6 any other documents during the course of your 7 work in this case? 8 <b>A. No.</b> 9 Q. All right. And you heard 10 Mr. Walker explain that he had had a 11 conversation with you about the Illinois 12 Manufacturers' Association; is that right? 13 <b>A. Yes.</b> 14 Q. What do you know, Dr. Castleman, 15 about the Illinois Manufacturers' Association? 16 <b>A. Well, there were -- there were</b> 17 <b>lawsuits, there were civil lawsuits and workers'</b> 18 <b>compensation claims for people who had</b> 19 <b>asbestosis and silicosis in the mid-'30s in</b> 20 <b>Illinois.</b> 21 <b>And as I understand it, the civil</b> 22 <b>courts and the workers' compensation agencies</b> 23 <b>rejected the claims under the terms of laws in</b> 24 <b>which they operated, and this provoked the</b> 25 <b>legislature in Illinois to revisit and revise</b></p>
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<p>1 Castleman, ScD 2 course of your retention in this matter? 3 MR. WALKER: Without saying I 4 asked Barry to think about anything, 5 I just alerted him to the fact that 6 I have made an exhibit of the 7 September 16, 1959 JM Board of 8 Directors meeting agenda, and that I 9 was going to give him a copy at the 10 deposition, which I'm now giving it 11 to him (handing). 12 THE WITNESS: (Perusing 13 document.) 14 Q. Okay. I see -- well, 15 Dr. Castleman, could you confirm that Mr. Walker 16 has, in fact, given you the September 16, 1959 17 Board of Director meeting minutes of the Johns 18 Manville Corporation? 19 <b>A. He has.</b> 20 MR. WALKER: And also, that 21 it's the same Exhibit, 824, that I 22 used the other day at pretrial 23 hearings. 24 Q. Has Mr. Walker -- 25 MR. MODESITT: Excuse me.</p>	<p>1 Castleman, ScD 2 <b>the legislation relating to workers'</b> 3 <b>compensation and perhaps in some ways, more</b> 4 <b>generally, prevention of occupational diseases.</b> 5 <b>And that was in 1936.</b> 6 Q. Do you know when asbestosis was 7 first recognized as a compensable disease under 8 the workers' compensation scheme in the state of 9 Illinois? 10 <b>A. 1936, I believe.</b> 11 Q. And do you have any familiarity 12 with the Illinois Occupational Disease Act as 13 distinct from the Workers' Compensation Act? 14 <b>A. No, I don't have a clear</b> 15 <b>distinction in mind.</b> 16 Q. Do you know if the Illinois 17 Manufacturers' Association had any role in this 18 course of events in the 1930s that led to 19 legislation involving occupational disease 20 claims? 21 <b>A. My impression is they had a</b> 22 <b>substantial role that the affected industry</b> 23 <b>was -- worked through the Illinois</b> 24 <b>Manufacturers' Association to develop a -- kind</b> 25 <b>of a unified response to this legislative</b></p>

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challenge and negotiate something that would be least damaging to their business activities.

Q. I'm sorry, say that last part again.

A. Least challenging to their business activities, least expensive.

Q. Would it be fair to say that it is your impression that the Illinois Manufacturing {sic} Association was involved somehow in lobbying or participating in the legislative process with regard to the development of that legislation?

A. Yes.

Q. Do you know whether the Illinois Manufacturing Association played any other role in connection with that legislation?

A. No. I think lobbying -- lobbying is a broad term, but I think that takes it in.

Q. Now, you mentioned that it was your impression that industrialists had worked through the Illinois Manufacturing Association.

Who do you mean to include in the term "industrialists"?

A. Well, I've seen lists of groups of

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people that were involved, including Crane Company. And Mr. Walker tells me that Johns Manville and Owens-Illinois were also involved in some of the documented activities of this group.

Q. The lists that you have seen of the groups of people involved, when did you see those lists?

A. Well, in connection with the case, oh, I can -- about 2007, I think. It was a case involving John Crane as a defendant. And I may have seen it earlier, but there were -- John Crane claims to have lost all their documents historically about asbestos. And so there are questions about what they could have known or should have known based on things like what was going on in the state of Illinois in the 1930s.

And so that's where I think I saw some of these documents and focused on them. I don't recall, there weren't many documents. They simply reflect that there were various committees, including, I think, a medical committee of corporate representatives who were

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in some way involved.

Q. Involved with John Crane?

A. Involved with Illinois Manufacturers' Association in connection with this legislation.

Q. So the lists that you saw back in 2007, you believe at least relate to the same legislation in the 1930s?

A. Right.

Q. Are those lists in your possession?

A. No. I mean, I have them, but I don't have them with me. They're part of a John Crane file, probably part of the Crane Co. file.

Q. From what source did you obtain those lists?

A. I don't remember. It was just, I think, one or two documents. And it might have been Bobby Hatten, it might have been somebody else, another plaintiff's attorney.

Q. Does Johns Manville appear on any of those lists?

A. I don't remember seeing Johns Manville on the list that -- I think it's only

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one list, and it was mostly company doctors, I believe.

Q. Does Owens-Illinois appear on that list?

A. I don't remember.

Q. Now, you also mentioned that Johns Manville was somehow involved in these efforts in the 1930s, and that was information that you obtained from Mr. Walker, I take it, that's information you obtained today?

A. Just now, yes, verbally.

Q. Could you tell me everything that you understand about Johns Manville's involvement in this legislation in Illinois in the 1930s?

A. I understand that Johns Manville's chief lawyer, Vandiver Brown, was one of the participants, one of the corporate representatives involved in this manufacturing -- manufacturers' committee.

MR. WALKER: Off the record.

MR. FISCHER: Sure.

(Discussion off the record.)

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<p>1 Castleman, ScD</p> <p>2 BY MR. FISCHER:</p> <p>3 Q. Do you have any information about</p> <p>4 what Mr. Brown's actual involvement was?</p> <p>5 A. No.</p> <p>6 Q. Do I understand it correctly that</p> <p>7 when you say he was a participant, you mean to</p> <p>8 say that he apparently was -- well, what do you</p> <p>9 mean by that?</p> <p>10 A. Well, I gather that his name</p> <p>11 appears on some of the documents as somebody who</p> <p>12 is involved as a corporate representative in</p> <p>13 this connection. That would make sense.</p> <p>14 They had a plant in Waukegan,</p> <p>15 Illinois, Johns Manville did. They had workers'</p> <p>16 compensation claims and lawsuits over asbestosis</p> <p>17 by the mid-1930s coming out of this plant.</p> <p>18 Q. And when you say "this plant," you</p> <p>19 mean the Waukegan plant, right?</p> <p>20 A. Right.</p> <p>21 Q. Have you seen any of the documents</p> <p>22 to which you just referred?</p> <p>23 A. No, not the ones naming Mr. Brown.</p> <p>24 Q. Have you seen -- other than this</p> <p>25 one list that you believe is in your John Crane</p>	<p>1 Castleman, ScD</p> <p>2 Q. I know that you're always kind</p> <p>3 enough to make that offer, but I really find</p> <p>4 that we get mixed up a little bit when we try to</p> <p>5 do two things at once.</p> <p>6 A. Okay. It's reference 82 on page</p> <p>7 207, or at least it's noted as a source of one</p> <p>8 of the abstracts I cite.</p> <p>9 It's called "The Pneumokonioses</p> <p>10 (Silicosis), Literature and Laws," Book III, or</p> <p>11 there are three such books. The first author is</p> <p>12 G.G. Davis, Chicago Medical Press, 1937. Right</p> <p>13 here (indicating).</p> <p>14 Q. Have you ever seen, Doctor, an</p> <p>15 actual copy of the publication entitled "The</p> <p>16 Pneumoconioses" --</p> <p>17 A. Yes.</p> <p>18 Q. -- "Literature and Laws," Book III?</p> <p>19 A. Yes, I have.</p> <p>20 Q. Okay. Do you recall by chance</p> <p>21 where you may have seen it?</p> <p>22 A. No.</p> <p>23 Q. Do you have a copy of it?</p> <p>24 A. No.</p> <p>25 Q. You had originally said that you</p>
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<p>1 Castleman, ScD</p> <p>2 file, have you seen any documents relating to</p> <p>3 legislation in Illinois in the 1930s related to</p> <p>4 occupational disease?</p> <p>5 A. Well, I've seen it mentioned in</p> <p>6 other places. There was a three-volume tome</p> <p>7 written called "The Pneumokoniosis," with a "k,"</p> <p>8 published between 1934 and 1937 by some doctors</p> <p>9 in Illinois. And they went through an</p> <p>10 interesting collection of writings, insurance</p> <p>11 industry publications, for example, periodicals.</p> <p>12 And a lot of the stuff that they compiled had to</p> <p>13 do with asbestosis and silicosis and the law</p> <p>14 that was being developed, or at least some of</p> <p>15 the law changes that were being discussed in</p> <p>16 Illinois in the mid-1930s.</p> <p>17 Q. And I see that you're paging</p> <p>18 through your book there. Are you looking for a</p> <p>19 citation perhaps?</p> <p>20 A. Just wondering if I could remember</p> <p>21 where I cited that thing in the book. It's</p> <p>22 probably under "compensation." Let's take a</p> <p>23 look. (Perusing book.)</p> <p>24 You can go on with your questions</p> <p>25 while I do this.</p>	<p>1 Castleman, ScD</p> <p>2 thought it was "Pneumokonioses" with a "k." It</p> <p>3 looks like that one is with a "c."</p> <p>4 Do you think there is a different</p> <p>5 publication called "The Pneumokonioses," with a</p> <p>6 "k"?</p> <p>7 A. It's the same publication. This</p> <p>8 could be a typo, or I could be remembering it</p> <p>9 wrong, it's been a long time.</p> <p>10 Q. I take it that that publication</p> <p>11 does not specifically relate to the legislation</p> <p>12 or whatever efforts were made in advance of the</p> <p>13 legislation to submit it to the Illinois</p> <p>14 legislature; is that right?</p> <p>15 A. It's not clear. I think it --</p> <p>16 because it is such a singular type of</p> <p>17 publication and the time when it came out is so</p> <p>18 perfect, really, if it was connected with this</p> <p>19 legislation, that would be just perfect as far</p> <p>20 as timing. And --</p> <p>21 Q. Let me ask it this way --</p> <p>22 A. And it looks like something that</p> <p>23 would have been commissioned by insurance and</p> <p>24 industrial interests. That's just my</p> <p>25 impression, but it's not something that I can</p>



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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>support with any kind of historical</b></p> <p>3 <b>documentation or accounting of how this</b></p> <p>4 <b>three-volume thing came to be commissioned and</b></p> <p>5 <b>written.</b></p> <p>6 Q. Okay. So it's fair to say, as you</p> <p>7 sit here now, you don't know whether or not</p> <p>8 there were, as you say, insurance or industrial</p> <p>9 interests urging the publication of this volume?</p> <p>10 <b>A. Right.</b></p> <p>11 Q. Any other publications or documents</p> <p>12 that you have seen that you believe are related</p> <p>13 in any way to the legislation in Illinois in the</p> <p>14 1930s that we've been discussing?</p> <p>15 <b>A. Nothing else comes to mind.</b></p> <p>16 Q. Any other materials or documents</p> <p>17 that you're aware of but which you have not seen</p> <p>18 that would relate to the legislation in Illinois</p> <p>19 in the 1930s relating to occupational disease</p> <p>20 that we've been discussing?</p> <p>21 <b>A. Only what Mr. Walker told me about</b></p> <p>22 <b>this morning.</b></p> <p>23 Q. And are there any other documents</p> <p>24 or publications that Mr. Walker told you about</p> <p>25 that we haven't talked about yet today?</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>leading figure as an attorney trying to minimize</b></p> <p>3 <b>the financial impact of occupational disease</b></p> <p>4 <b>claims on American industry in the 1930s.</b></p> <p>5 Q. And I mean to ask you a very</p> <p>6 specific question, Doctor, what is your</p> <p>7 understanding as to A.C. Hirth's involvement</p> <p>8 with the Illinois Manufacturers' Association?</p> <p>9 <b>A. I don't know anything about it. I</b></p> <p>10 <b>just understand from Mr. Walker that he was</b></p> <p>11 <b>involved in some way, maybe like with Mr. Brown</b></p> <p>12 <b>being listed on some committee. But having not</b></p> <p>13 <b>seen the documentation, I can't really tell you</b></p> <p>14 <b>any more.</b></p> <p>15 Q. You said that you believe that</p> <p>16 Mr. Hirth was interested in minimizing the</p> <p>17 financial impact of dust disease on industry?</p> <p>18 Did I understand that correctly?</p> <p>19 <b>A. Right.</b></p> <p>20 Q. I take it -- well, let me ask you</p> <p>21 this: Are you aware of any writings of</p> <p>22 Mr. Hirth in which he says that that is his</p> <p>23 interest?</p> <p>24 <b>A. Well, some presentations he did at</b></p> <p>25 <b>different groups. Let me see, what had I seen?</b></p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>A. No. It was a brief conversation.</b></p> <p>3 <b>I got the impression he's doing some rummaging</b></p> <p>4 <b>through historical papers relating to the</b></p> <p>5 <b>legislation and what was going on in the 1930s</b></p> <p>6 <b>with this Illinois Manufacturer --</b></p> <p>7 <b>Manufacturers' Association, and I look forward</b></p> <p>8 <b>to seeing them.</b></p> <p>9 Q. You mentioned that Mr. Walker had</p> <p>10 also told you that Owens-Illinois was somehow</p> <p>11 involved with the Illinois Manufacturers'</p> <p>12 Association, right?</p> <p>13 <b>A. That's what he told me.</b></p> <p>14 Q. What is your understanding of</p> <p>15 Owens-Illinois' involvement?</p> <p>16 <b>A. I think he mentioned A.C. Hirth,</b></p> <p>17 <b>H-I-R-T-H, as being involved. Hirth was a --</b></p> <p>18 <b>what do you call him, outhouse counsel? He was</b></p> <p>19 <b>an outside attorney employed by Owens-Illinois</b></p> <p>20 <b>and was prominent in the formation of the</b></p> <p>21 <b>industrial hygiene foundation and represented</b></p> <p>22 <b>Owens-Illinois on the Board of Industrial</b></p> <p>23 <b>Hygiene Foundation for many years. And I</b></p> <p>24 <b>believe he -- or at least I understand that he</b></p> <p>25 <b>was involved, that would also figure he was a</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>I haven't actually seen what he said at the</b></p> <p>3 <b>formation meeting of the Industrial Hygiene</b></p> <p>4 <b>Foundation, but it is alluded to in the notes of</b></p> <p>5 <b>Vandiver Brown, the meeting on January 15, 1935</b></p> <p>6 <b>in Pittsburgh.</b></p> <p>7 Q. I'm sorry, January what?</p> <p>8 <b>A. I may have seen other speeches by</b></p> <p>9 <b>A.C. Hirth, but I can't recall. It seems like</b></p> <p>10 <b>I've seen one somewhere, but I can't tell you</b></p> <p>11 <b>what it was or what it said.</b></p> <p>12 Q. Give me that date again, the Brown</p> <p>13 notes of the meeting of January --</p> <p>14 <b>A. January 15, 1935, which really</b></p> <p>15 <b>started the whole process of forming the</b></p> <p>16 <b>Industrial Hygiene Foundation. I write about</b></p> <p>17 <b>that in Chapter 3.</b></p> <p>18 Q. As you sit here now, other than</p> <p>19 Vandiver Brown's notes, have you seen anything</p> <p>20 that would indicate or that would include</p> <p>21 writings or comments of Mr. Hirth?</p> <p>22 <b>A. Nothing else comes to mind.</b></p> <p>23 Q. What -- if you know, did the</p> <p>24 Illinois Manufacturers' Association urge the</p> <p>25 passage of legislation in Illinois in the 1930s,</p>

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<p>1 Castleman, ScD 2 or were they opposed to the passage of 3 legislation? 4 <b>A. I don't know exactly what their 5 position was. I -- my impression is that they 6 realized that there would have -- there would be 7 some kind of legislation and wanted to assure 8 that legislation was least damaging to their 9 business activities.</b> 10 Q. And what do you base that on? Let 11 me break that up into pieces, I'm sorry. 12 What do you base your opinion on 13 that they knew that there would, in fact, be 14 legislation passed? 15 <b>A. Well, of course nobody knows these 16 things are for sure going to happen until they 17 happen, but it's -- I get the impression that 18 there was a certain consternation that there 19 were these people who were dying with asbestosis 20 and silicosis and so they, for technical, legal 21 reasons were closed out both from filing 22 workers' compensation claims and from suing 23 their employer.</b> 24 <b>And this was something that put the 25 ball in the court of the state legislature to</b></p>	<p>1 Castleman, ScD 2 any part of the three-volume set that you 3 believe covers these issues? 4 <b>A. No.</b> 5 Q. And I think -- 6 MR. WALKER: If I can 7 interrupt, Mr. Fischer. 8 MR. FISCHER: Mm-hm. 9 MR. WALKER: Before or during 10 Dr. Castleman's direct examination, 11 I will be providing him with a copy 12 of Plaintiffs' Exhibit No. 603, the 13 1935 speech by Hirth, which he 14 entitled "The Problem" given at the 15 founding of IHF. 16 Two of the more delightful 17 praises: He says, "a concerted and 18 well-directed action" on page 1, and 19 on page 10 says that each company is 20 its brother's keeper. 21 I'm assuming that I have 22 provided that to your firm on other 23 occasions, but I'll certainly try to 24 give that to you yet this week. 25 MR. FISCHER: Without waiving</p>
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<p>1 Castleman, ScD 2 <b>resolve. And I gather that there was enough 3 public pressure from unions and media interests 4 and so on that something was, in fact, done 5 about it.</b> 6 Q. And what I'm asking is, from where 7 do you get that impression? 8 <b>A. From reading all the things that 9 I've seen about it. I mean, little bits and 10 pieces in a three-volume set that made reference 11 to the Illinois law, Johns Manville documents 12 that made reference to it; I think I must have 13 seen some of them, although I can't off the top 14 of my head recall specific documents.</b> 15 Q. Have you read the entire 16 three-volume set? 17 <b>A. I've looked through it for 18 everything it had on asbestosis. I don't think 19 I can say I've looked at every page, and I 20 probably missed abstracts -- missed reading 21 abstracts that might provide additional 22 information on some of the questions you're 23 asking about, what was going on in Illinois in 24 the '30s.</b> 25 Q. Can you point me specifically to</p>	<p>1 Castleman, ScD 2 any objections with regard to 3 whether or not that would be 4 appropriate at this stage of the 5 litigation, let me say that I am 6 aware of the document that you're 7 referring to, Mr. Walker, and it's 8 not necessary for you to send me a 9 copy. 10 MR. WALKER: Okay. Thank 11 you. 12 BY MR. FISCHER: 13 Q. Dr. Castleman, you heard Mr. Walker 14 refer to what he described as a speech by 15 Mr. Hirth that he's marked as Exhibit No. 603. 16 Is that something that, from 17 Mr. Walker's description, you recognize as 18 something you've seen before? 19 <b>A. I think I may have seen that.</b> 20 Q. Are you prepared in any way to 21 discuss it today? 22 <b>A. No.</b> 23 Q. Do you know anything about what 24 Mr. Hirth is purported to have said in the 25 course of that speech?</p>

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<p>1 Castleman, ScD</p> <p>2 <b>A. I don't recall what he said in that</b></p> <p>3 <b>particular speech, but I think I have seen that.</b></p> <p>4 Q. If you -- well, let me ask you</p> <p>5 this: Do you recall when it was that you think</p> <p>6 you saw it?</p> <p>7 <b>A. No, I don't remember when I saw it.</b></p> <p>8 Q. Do you know how long ago it was</p> <p>9 that you think you saw it?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Do you have any information as to</p> <p>12 what position Mr. Hirth may have had with regard</p> <p>13 to whether or not legislation in Illinois in the</p> <p>14 1930s on the issue of occupational disease was a</p> <p>15 good thing or a bad thing?</p> <p>16 <b>A. I don't recall what he might have</b></p> <p>17 <b>said about that. Again, I think this was -- the</b></p> <p>18 <b>industry was in a reactive mode at this time,</b></p> <p>19 <b>and they were not initiating the legislation,</b></p> <p>20 <b>but they wanted to affect its development in a</b></p> <p>21 <b>way that it would be consistent with their</b></p> <p>22 <b>business interests.</b></p> <p>23 Q. Do you know whether there were</p> <p>24 public hearings with regard to this proposed</p> <p>25 legislation?</p>	<p>1 Castleman, ScD</p> <p>2 of filings were?</p> <p>3 <b>A. The rates of filings --</b></p> <p>4 Q. Yes, sir.</p> <p>5 <b>A. -- of claims?</b></p> <p>6 <b>No, I haven't.</b></p> <p>7 Q. When did silicosis become</p> <p>8 compensable as an occupational disease in</p> <p>9 Illinois?</p> <p>10 MR. WALKER: Do you mean as</p> <p>11 opposed to those plaintiffs that had</p> <p>12 been successful under what we call</p> <p>13 common lawsuits?</p> <p>14 MR. FISCHER: I may be able</p> <p>15 to rephrase it.</p> <p>16 MR. WALKER: I object to the</p> <p>17 question, unless you talk about what</p> <p>18 I might call a matrix approach of --</p> <p>19 under the Industrial Commission or</p> <p>20 the trial by jury under common law</p> <p>21 theories.</p> <p>22 Q. Let me ask it that way,</p> <p>23 Dr. Castleman: Are you aware of the rate of</p> <p>24 filings of claims with the Industrial Commission</p> <p>25 of people who asserted that they had contracted</p>
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<p>1 Castleman, ScD</p> <p>2 <b>A. If there were, I haven't seen any</b></p> <p>3 <b>transcripts of legislative hearings or other</b></p> <p>4 <b>types of public hearings that may have occurred.</b></p> <p>5 Q. Do you know if there were any</p> <p>6 groups or organizations that urged passage of</p> <p>7 the legislation?</p> <p>8 <b>A. If there were any mentioned in the</b></p> <p>9 <b>things that I've read, I don't recall who they</b></p> <p>10 <b>might have been. I can easily imagine unions,</b></p> <p>11 <b>for example, wanting to see something done by</b></p> <p>12 <b>the legislators, but I don't really remember</b></p> <p>13 <b>specific documents that talk about the parties</b></p> <p>14 <b>that were speaking publicly in favor of the</b></p> <p>15 <b>legislation or of some kind of legislation.</b></p> <p>16 Q. And just so we're clear, you can</p> <p>17 imagine that unions might be in favor of this</p> <p>18 kind of legislation, but you don't have any</p> <p>19 information specifically about the legislation</p> <p>20 in Illinois and whether there were any unions</p> <p>21 that urged passage or not passage?</p> <p>22 <b>A. That's right.</b></p> <p>23 Q. Have you looked to see, Doctor,</p> <p>24 whether or not after asbestosis became a</p> <p>25 compensable disease in Illinois, what the rate</p>	<p>1 Castleman, ScD</p> <p>2 asbestosis through their work after asbestosis</p> <p>3 became compensable under that system?</p> <p>4 <b>A. I had seen something and recorded</b></p> <p>5 <b>something about the filing of claims in the</b></p> <p>6 <b>state of Illinois. Let me see if I can find it</b></p> <p>7 <b>here.</b></p> <p>8 <b>(Perusing book.) Somewhere I had</b></p> <p>9 <b>seen, and I thought recorded, that there were a</b></p> <p>10 <b>number of claims against Johns Manville in the</b></p> <p>11 <b>1930s in Illinois before there were changes made</b></p> <p>12 <b>in the law.</b></p> <p>13 Q. And so that I understand, you're</p> <p>14 talking about before the passage of this</p> <p>15 legislation that we're talking about?</p> <p>16 <b>A. Right.</b></p> <p>17 Q. How about after the passage of the</p> <p>18 legislation, are you aware of anything about the</p> <p>19 number of claims or -- in that sentence, I'm</p> <p>20 using "claims" to include claims with the</p> <p>21 Industrial Commission or claims in the common</p> <p>22 law system, any kind of claim where somebody</p> <p>23 sought compensation for the disease asbestosis?</p> <p>24 <b>A. No, I don't know what happened in</b></p> <p>25 <b>terms of claims that were made. I mean, I might</b></p>

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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>know one or two scattered claims. Like, I knew</b></p> <p>3 <b>of a claim that was filed in the late '40s just</b></p> <p>4 <b>because I saw some reference to that in the</b></p> <p>5 <b>Johns Manville archives, Dominick Bertogliat,</b></p> <p>6 <b>B-E-R-T-O-G-L-I-A-T. He was a foreman at the</b></p> <p>7 <b>Waukegan plant, I think.</b></p> <p>8 <b>But I haven't come across</b></p> <p>9 <b>information that really, you know, gives any</b></p> <p>10 <b>sense of how many claims there were against</b></p> <p>11 <b>Johns Manville in Illinois in the years</b></p> <p>12 <b>following the enactment of the changes in the</b></p> <p>13 <b>law in 1936.</b></p> <p>14 <b>Q. Do you know anything about what</b></p> <p>15 <b>position Vandiver Brown was taking on the</b></p> <p>16 <b>question of whether or not there should be</b></p> <p>17 <b>legislation in Illinois that would recognize</b></p> <p>18 <b>asbestosis as a compensable disease?</b></p> <p>19 <b>A. I don't know specifically what</b></p> <p>20 <b>Vandiver Brown's position was.</b></p> <p>21 <b>My impression is that the general</b></p> <p>22 <b>position of industry at the time was that when</b></p> <p>23 <b>laws were changed in a way that explicitly</b></p> <p>24 <b>recognized asbestosis and silicosis as</b></p> <p>25 <b>compensable diseases, that these laws be phased</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>the 1930s that steps should be taken to prevent</b></p> <p>3 <b>asbestosis and silicosis from becoming</b></p> <p>4 <b>compensable diseases in the state of New Jersey</b></p> <p>5 <b>under that state's version of the Occupational</b></p> <p>6 <b>Disease Act and the Workers' Compensation Act?</b></p> <p>7 <b>A. That appears to have been his view</b></p> <p>8 <b>in 1934 and possibly by -- possibly in the</b></p> <p>9 <b>situation that the industry faced in Illinois,</b></p> <p>10 <b>some adjustment had to be made in a situation</b></p> <p>11 <b>where they weren't able to kill the legislation,</b></p> <p>12 <b>and then they had to come to terms with seeing</b></p> <p>13 <b>that the legislation written was something that</b></p> <p>14 <b>they felt was as good a deal as they could get.</b></p> <p>15 <b>Q. And would it be fair to say,</b></p> <p>16 <b>Dr. Castleman, that everything that you said in</b></p> <p>17 <b>that last answer after the word "possibly" is</b></p> <p>18 <b>something that you are essentially speculating</b></p> <p>19 <b>about without being able to point me to any</b></p> <p>20 <b>particular document or statement that would</b></p> <p>21 <b>support that claim?</b></p> <p>22 <b>A. Well, this is where speculation in</b></p> <p>23 <b>a legal context has a special meaning, and I</b></p> <p>24 <b>tend to try to avoid that.</b></p> <p>25 <b>It's my impression, from all of the</b></p>
Page 30	Page 32
<p>1 <b>Castleman, ScD</b></p> <p>2 <b>in in a way that left the employers free from</b></p> <p>3 <b>liability in the year -- for exposure in the</b></p> <p>4 <b>years prior to the enactment of the law so that</b></p> <p>5 <b>they could avoid having a deluge of claims filed</b></p> <p>6 <b>as soon as the law was passed and having to</b></p> <p>7 <b>compensate all of those people who have become</b></p> <p>8 <b>crippled from working for them, from breathing</b></p> <p>9 <b>occupational dusts.</b></p> <p>10 <b>Q. When did silicosis become</b></p> <p>11 <b>compensable in the state of Illinois as an</b></p> <p>12 <b>occupational disease, if you know?</b></p> <p>13 <b>MR. WALKER: You mean</b></p> <p>14 <b>Industrial Commission-type</b></p> <p>15 <b>compensable?</b></p> <p>16 <b>MR. FISCHER: Yes, I do.</b></p> <p>17 <b>MR. WALKER: Thank you.</b></p> <p>18 <b>A. Yeah. I think that was in 1936</b></p> <p>19 <b>with the changes in the law listing both</b></p> <p>20 <b>silicosis and asbestosis in the text of the law.</b></p> <p>21 <b>As far as I know, there wasn't any different</b></p> <p>22 <b>arrangement for silicosis than there was for</b></p> <p>23 <b>asbestos.</b></p> <p>24 <b>BY MR. FISCHER:</b></p> <p>25 <b>Q. Was it Vandiver Brown's position in</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>things that I have read that have any bearing on</b></p> <p>3 <b>the subject, that this is what went on. But</b></p> <p>4 <b>whether you or a Court would characterize that</b></p> <p>5 <b>as speculation, I leave to you and the Court. I</b></p> <p>6 <b>wouldn't characterize it in that word.</b></p> <p>7 <b>Q. Would it be fair to say that you</b></p> <p>8 <b>could not point me to any specific document or</b></p> <p>9 <b>other material that would support your</b></p> <p>10 <b>impression in the sense of it actually says what</b></p> <p>11 <b>your impression is?</b></p> <p>12 <b>A. I can't tell you any more than I</b></p> <p>13 <b>have in terms of documentary basis for my views.</b></p> <p>14 <b>Q. Have we exhausted your knowledge</b></p> <p>15 <b>with regard specifically to this legislation in</b></p> <p>16 <b>Illinois in the 1930s and the involvement of the</b></p> <p>17 <b>Illinois Manufacturers' Association, if any?</b></p> <p>18 <b>A. Yes.</b></p> <p>19 <b>Q. Anything else that Mr. Walker has</b></p> <p>20 <b>brought to your attention as something that</b></p> <p>21 <b>might be relevant to your work in this case?</b></p> <p>22 <b>A. I don't think so. I think we've</b></p> <p>23 <b>spent about as much time talking about it as</b></p> <p>24 <b>Mr. Walker and I spent talking about it.</b></p> <p>25 <b>Q. Is it still true that you have</b></p>



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1 Castleman, ScD  
2 never read the trial testimony of  
3 Richard Grimmie from 1996?

4 **A. That's right. I guess I've just**  
5 **been too busy.**

6 Q. Fair to say, then, that you have  
7 not relied upon the testimony of Mr. Grimmie in  
8 forming any of the opinions that you would offer  
9 to the jury in this matter?

10 MR. WALKER: Well, what  
11 opinions are those? I mean, every  
12 defendant moves to limit the  
13 opinions that he expresses.

14 So, I mean, I object to the  
15 question. It seems kind of odd that  
16 you would move in advance to say  
17 that Dr. Castleman can't offer  
18 opinion about Acts and then go to  
19 the deposition and imply that  
20 Mrs. Shipley and her lawyer are  
21 going to violate the rulings.

22 Q. Just so we're clear, Dr. Castleman,  
23 I actually move that you not be able to testify  
24 at all, but I didn't move to limit your  
25 testimony about any particular opinion.

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1 Castleman, ScD

2 MR. WALKER: But I would  
3 assume that you -- if you're  
4 complaining, you certainly  
5 complained less as at the time that  
6 your brothers and sisters put this  
7 harpoon in you than you seem to be  
8 now.

9 Q. Doctor, what I'm really trying to  
10 get at is, if you haven't read Mr. Grimmie's  
11 testimony, I take it you don't rely on it?

12 **A. That's right. I mean, I**  
13 **understand, and I may have seen excerpts of his**  
14 **testimony, that he's a former Owens-Illinois**  
15 **management official who came to work as a worker**  
16 **and who now, many years later, claims to recall**  
17 **being told something about the dangers of**  
18 **asbestos at the time he was hired by**  
19 **Owens-Illinois.**

20 Q. And you have that understanding  
21 because at prior depositions you and I have  
22 actually gone through some of Mr. Grimmie's  
23 testimony together, right?

24 **A. Quite possibly. Like I say, I**  
25 **mean, these depositions are -- well, they're**

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1 **Castleman, ScD**  
2 **being done at the rate of about 60 a year, so**  
3 **it's a little hard to remember what goes on at**  
4 **each one.**

5 Q. Would it be fair to say that other  
6 than the times when I have showed you  
7 Mr. Grimmie's testimony no one else -- strike  
8 that.

9 Has anybody other than me ever  
10 shown you Mr. Grimmie's testimony?

11 **A. No. Apparently you're the only one**  
12 **who thinks it has any value.**

13 Q. Is it still true that you have not  
14 read the testimony of any Owens-Illinois  
15 employee?

16 **A. Oh, I think I read the testimony of**  
17 **the industrial hygienist, Mr. Willis Hazard. I**  
18 **read some of his testimony, I believe.**

19 Q. Have you read -- well, let me ask  
20 you this: Do you recall what deposition of  
21 Mr. Hazard's you read?

22 **A. No.**

23 Q. Did you read the whole thing?

24 **A. I don't know. If I did, it was a**  
25 **long time ago.**

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1 **Castleman, ScD**

2 Q. How long ago?

3 **A. Well, I think the depositions are**  
4 **dated in the early '80s or before, it could have**  
5 **been.**

6 Q. Are you familiar with the testimony  
7 of Mr. Hazard from February 11, 1981?

8 **A. That sounds like one of them, yes.**

9 **Q. Have you ever testified that you**  
10 **did not read the testimony of Mr. Hazard?**

11 **A. I may have. Like I say, I think**  
12 **I've probably seen excerpts of it. And my**  
13 **memory of what I saw may not be totally**  
14 **consistent in all the times I've been asked**  
15 **about it. It's not something that I've written**  
16 **about, it's not something that I paid particular**  
17 **attention to.**

18 Q. It's not discussed in your book,  
19 right; that is, Mr. Hazard's testimony is not  
20 discussed in your book?

21 **A. I don't think so. I think that's**  
22 **correct.**

23 Q. And Mr. Grimmie's testimony is not  
24 discussed in your book, right?

25 **A. That's right.**

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<p>1 <b>Castleman, ScD</b></p> <p>2 Q. I've given you a complete copy of</p> <p>3 Mr. Grimmie's testimony in the past, right?</p> <p>4 <b>A. I believe you have.</b></p> <p>5 Q. And I've given you a complete copy</p> <p>6 of Mr. Hazard's testimony in the past, correct?</p> <p>7 <b>A. I didn't know where that came from,</b></p> <p>8 <b>but I do have it in my Owens-Illinois file.</b></p> <p>9 <b>Whether I first got it from you or not, I don't</b></p> <p>10 <b>remember.</b></p> <p>11 Q. I brought copies of each of them</p> <p>12 for you today. I will just set them here on the</p> <p>13 table. You're welcome to take them if you care</p> <p>14 to.</p> <p>15 <b>A. I already have them, I'm pretty</b></p> <p>16 <b>sure, in my Owens-Illinois file.</b></p> <p>17 Q. Okay. Well, if you think you've</p> <p>18 got them, then there's no need for you to take</p> <p>19 those. But if you think they're helpful to you,</p> <p>20 I brought them for you.</p> <p>21 Could you just acknowledge for me,</p> <p>22 Dr. Castleman, that we've got Owens-Illinois</p> <p>23 Exhibit No. 666, which is dated</p> <p>24 November 26, 1996, and it appears to be the</p> <p>25 testimony of Richard E. Grimmie?</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 record to be clear that the</p> <p>3 transcript in which you referred as</p> <p>4 OI Exhibit No. 650 references quite</p> <p>5 a few exhibits on the page that</p> <p>6 follows Arabic page 3. And the copy</p> <p>7 that you've provided Dr. Castleman</p> <p>8 has none of them attached to it.</p> <p>9 MR. FISCHER: I agree.</p> <p>10 MR. WALKER: Okay.</p> <p>11 MR. FISCHER: I'll also state</p> <p>12 that the copy of the transcript of</p> <p>13 Mr. Grimmie that I've provided here</p> <p>14 makes reference to exhibits that</p> <p>15 were available to Mr. Grimmie and</p> <p>16 the people there, and that they are</p> <p>17 not attached to this transcript</p> <p>18 either.</p> <p>19 BY MR. FISCHER:</p> <p>20 Q. Dr. Castleman, as I said, I believe</p> <p>21 you testified that you have those exhibits, but</p> <p>22 I'm happy to send them to you if you'd like.</p> <p>23 Would you like me to?</p> <p>24 <b>A. I don't see a list of what the</b></p> <p>25 <b>exhibits are. I guess I -- you have to go</b></p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And Owens-Illinois No. 650, dated</p> <p>4 February 11, 1981, is the testimony of</p> <p>5 Willis Hazard?</p> <p>6 <b>A. Right.</b></p> <p>7 MR. WALKER: Let me just</p> <p>8 comment that the only trans- -- the</p> <p>9 transcripts I've seen of Hazard on</p> <p>10 February 11th, '81 -- let me just</p> <p>11 check -- I thought that had a lot of</p> <p>12 exhibits associated with it, and I</p> <p>13 don't see any exhibits here,</p> <p>14 Mr. Fischer.</p> <p>15 What part of my recollection</p> <p>16 is wrong?</p> <p>17 MR. FISCHER: There are no</p> <p>18 exhibits attached there.</p> <p>19 Q. Dr. Castleman, would you like to</p> <p>20 have the exhibits? I think you testified in the</p> <p>21 past that you have them, but if you would like</p> <p>22 copies of them, I'm happy to send them to you.</p> <p>23 MR. WALKER: Well, I'm not</p> <p>24 saying that you should or shouldn't</p> <p>25 give them to him, I just want the</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>through the transcript to see that, at least</b></p> <p>3 <b>that's the way it looks. All I have is an index</b></p> <p>4 <b>that lists what pages the exhibits are mentioned</b></p> <p>5 <b>on, at least that's my reading of this thing.</b></p> <p>6 <b>I don't think it would probably be</b></p> <p>7 <b>useful for me to take the time to try and figure</b></p> <p>8 <b>this out. I don't actually see the reference to</b></p> <p>9 <b>the first 19 exhibits on page 4, even though as</b></p> <p>10 <b>I see it as Exhibit Nos. 1 to 19, and then</b></p> <p>11 <b>there's reference to page 4.</b></p> <p>12 Q. You've testified in the past,</p> <p>13 Dr. Castleman, about the number of references in</p> <p>14 the literature to asbestos-related disease as of</p> <p>15 certain points in time, right?</p> <p>16 <b>A. I have.</b></p> <p>17 Q. And I was curious about when you</p> <p>18 first made that count.</p> <p>19 <b>A. Well, I don't remember. I mean,</b></p> <p>20 <b>I've been testifying in these cases since I was</b></p> <p>21 <b>32 years old, and I'm an old man now. I don't</b></p> <p>22 <b>remember when I was first asked to give numbers.</b></p> <p>23 <b>Lots of times I prefer to do it by</b></p> <p>24 <b>referencing something like the report published</b></p> <p>25 <b>by the State of Pennsylvania in 1935 in which</b></p>

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<p>1 Castleman, ScD</p> <p>2 there are 125 references to earlier works on</p> <p>3 asbestosis, published all over the world.</p> <p>4 It's something I'm more comfortable</p> <p>5 with than trying to pick numbers and answering</p> <p>6 the different questions that lawyers who ask me</p> <p>7 about, you know, how many articles on asbestosis</p> <p>8 were published in the world literature by 1953</p> <p>9 or whatever.</p> <p>10 You know, I feel I'm less than</p> <p>11 precise in my answers about questions like that</p> <p>12 because I really don't know exactly how many</p> <p>13 articles I had seen by a given date.</p> <p>14 Q. Did you ever make a list that would</p> <p>15 show how many articles that appeared before any</p> <p>16 given date?</p> <p>17 A. No. I think David Ozonoff did</p> <p>18 something like that, and I saw a list that he</p> <p>19 had compiled, but I never did that myself.</p> <p>20 Q. Is the Ozonoff list cited in your</p> <p>21 book?</p> <p>22 A. No.</p> <p>23 Q. Is that something you still have in</p> <p>24 your possession?</p> <p>25 A. I don't think so.</p>	<p>1 Castleman, ScD</p> <p>2 objection. Go ahead.</p> <p>3 MR. FISCHER: Thank you.</p> <p>4 BY MR. FISCHER:</p> <p>5 Q. The Dreessen publication in '39 in</p> <p>6 addition to the publication in '38, that the '39</p> <p>7 publication essentially discusses the same work</p> <p>8 that he did in the textile mills, correct?</p> <p>9 A. That's a very short summary that he</p> <p>10 coauthored with Dr. Sayers, yes.</p> <p>11 Q. Yes. And I'm trying to get a sense</p> <p>12 for when you've done your count, does the '39</p> <p>13 one count as an additional publication?</p> <p>14 A. I would think of it that way, yes.</p> <p>15 Q. How about the Cartier case series</p> <p>16 in 1952?</p> <p>17 A. Anything that was published that</p> <p>18 talked about asbestos and disease, I would count</p> <p>19 as part of the published literature.</p> <p>20 Q. So that would include Cartier from</p> <p>21 '52, right?</p> <p>22 A. Sure.</p> <p>23 Q. Would it include the publication of</p> <p>24 the Owens-Illinois Kaylo studies in 1955?</p> <p>25 A. Sure.</p>
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<p>1 Castleman, ScD</p> <p>2 Q. When you talk about the documents</p> <p>3 that made reference to asbestos-related disease</p> <p>4 at certain points in time, I take it that</p> <p>5 Merewether's publications would be included,</p> <p>6 right?</p> <p>7 A. Sure.</p> <p>8 Q. Including the textbook that he</p> <p>9 edited in 1956?</p> <p>10 A. That's one of Merewether's</p> <p>11 publications, yes.</p> <p>12 Q. The Dreessen article from '38?</p> <p>13 A. Yes, that's certainly part of the</p> <p>14 literature.</p> <p>15 Q. There's a Dreessen publication --</p> <p>16 MR. WALKER: I assume this is</p> <p>17 not a trick question, you're not</p> <p>18 going to say "And didn't you say</p> <p>19 that Merewether's article that was</p> <p>20 actually published in '38 was part</p> <p>21 of the literature in '36"? I mean</p> <p>22 that's not your purpose?</p> <p>23 MR. FISCHER: That's not.</p> <p>24 No, it's not.</p> <p>25 MR. WALKER: Okay. I have no</p>	<p>1 Castleman, ScD</p> <p>2 Q. Would it include other publications</p> <p>3 of Dr. Schepers?</p> <p>4 A. If it talked about asbestos, it</p> <p>5 would.</p> <p>6 Q. And it would include Doll in '55;</p> <p>7 is that right?</p> <p>8 A. Right.</p> <p>9 Q. Would it include editions of JAMA</p> <p>10 at various points in time to the extent that</p> <p>11 they discussed asbestosis?</p> <p>12 A. Yes. I mean, it would include</p> <p>13 anything in the medical literature or anyplace</p> <p>14 else that was published and publicly available</p> <p>15 as a published writing that talked about</p> <p>16 asbestos as a hazard.</p> <p>17 Q. If a publication appeared in a</p> <p>18 journal and then it was abstracted in the IHF</p> <p>19 Digest, would that count as one publication or</p> <p>20 two?</p> <p>21 A. I don't know. I mean, it just</p> <p>22 depends how you do your counting. You could</p> <p>23 say, you know, abstracts are counted as separate</p> <p>24 publications because they are, in a sense,</p> <p>25 separately available in ways that the original</p>

<p style="text-align: right;">Page 45</p> <p>1 <b>Castleman, ScD</b></p> <p>2 <b>articles might not be. It just depends. It</b></p> <p>3 <b>just depends on the question.</b></p> <p>4 <b>And I have said on occasion that</b></p> <p>5 <b>there were at least 80 articles and abstracts</b></p> <p>6 <b>published that talked about asbestos and cancer</b></p> <p>7 <b>before 1950, but there I'm clear in the way I</b></p> <p>8 <b>expressed it that I am counting abstracts.</b></p> <p>9 Q. And to the extent -- what I'm</p> <p>10 really trying to do, Doctor, of course, is</p> <p>11 figure out how you do it.</p> <p>12 If someone asked you how many</p> <p>13 publications were there, would the abstract</p> <p>14 count as a separate publication to you, or would</p> <p>15 it depend on the context, or how would you do</p> <p>16 it?</p> <p>17 <b>A. I normally --</b></p> <p>18 MR. WALKER: Didn't he just</p> <p>19 answer it depends on the context? I</p> <p>20 mean --</p> <p>21 <b>A. Yes, it depends on the context. I</b></p> <p>22 <b>normally don't think of abstracts as separate</b></p> <p>23 <b>publications, but in terms of notice and</b></p> <p>24 <b>availability of information in cases of this</b></p> <p>25 <b>kind, abstracts can be very important.</b></p>	<p style="text-align: right;">Page 47</p> <p>1 <b>Castleman, ScD</b></p> <p>2 Q. And it was interested in a wide</p> <p>3 variety of occupational diseases, not just those</p> <p>4 related to asbestos, correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Much of the workings of the IHF had</p> <p>7 nothing to do with asbestos?</p> <p>8 <b>A. Right.</b></p> <p>9 Q. There were certainly members of the</p> <p>10 IHF that had no connection to industrial use of</p> <p>11 asbestos?</p> <p>12 <b>A. I suppose so, although asbestos</b></p> <p>13 <b>insulation was very widely used in the factories</b></p> <p>14 <b>of diverse members of the IHF.</b></p> <p>15 Q. It would be inaccurate to describe</p> <p>16 the IHF as an asbestos institution, correct?</p> <p>17 <b>A. Yes. I wouldn't think of it that</b></p> <p>18 <b>way. It was more broadly based.</b></p> <p>19 Q. The IHF Digest published abstracts</p> <p>20 of medical and industrial literature that might</p> <p>21 relate to workplace conditions, right?</p> <p>22 <b>A. And hazards, yes.</b></p> <p>23 Q. "And hazards."</p> <p>24 Including industrial disease?</p> <p>25 <b>A. Right.</b></p>
<p style="text-align: right;">Page 46</p> <p>1 <b>Castleman, ScD</b></p> <p>2 <b>It may well be that defendant</b></p> <p>3 <b>companies that were members of the IHF didn't</b></p> <p>4 <b>receive certain medical journals, and yet they</b></p> <p>5 <b>received the Industrial Hygiene Digest, they did</b></p> <p>6 <b>receive reports about what articles on asbestos</b></p> <p>7 <b>said in various medical journals around the</b></p> <p>8 <b>world.</b></p> <p>9 Q. Let me ask you a little bit about</p> <p>10 the IHF.</p> <p>11 The meetings of the IHF were</p> <p>12 contemporaneously publicized, correct?</p> <p>13 <b>A. Well, some of them were. They had</b></p> <p>14 <b>a -- kind of a general or plenary meeting that</b></p> <p>15 <b>received some publicity in newspapers in the</b></p> <p>16 <b>late '40s, so I understand, according to</b></p> <p>17 <b>writings of the IHF.</b></p> <p>18 <b>But then there were other kinds of,</b></p> <p>19 <b>you know, different committees and groups within</b></p> <p>20 <b>the IHF whose discussions, I think, were more</b></p> <p>21 <b>closely held and which were not the subject of</b></p> <p>22 <b>any publications.</b></p> <p>23 Q. The IHF was interested in</p> <p>24 occupational disease, right?</p> <p>25 <b>A. Right.</b></p>	<p style="text-align: right;">Page 48</p> <p>1 <b>Castleman, ScD</b></p> <p>2 Q. And the IHF Digest was widely</p> <p>3 distributed amongst IHF members, correct?</p> <p>4 <b>A. Sure. It was one of their reasons</b></p> <p>5 <b>they became members.</b></p> <p>6 Q. Was to get the IHF Digest?</p> <p>7 <b>A. Right.</b></p> <p>8 Q. It was a tool to disseminate</p> <p>9 information?</p> <p>10 <b>A. Right.</b></p> <p>11 Q. I'm sorry, I didn't catch your</p> <p>12 answer.</p> <p>13 <b>A. "Right."</b></p> <p>14 Q. Are you aware of any other</p> <p>15 public -- any publication that disseminated more</p> <p>16 information in the 1940s and '50s about</p> <p>17 asbestos-related disease than the IHF Digest?</p> <p>18 <b>A. The only thing that came close</b></p> <p>19 <b>would have been the Journal of Industrial</b></p> <p>20 <b>Hygiene, a later Journal of Industrial Hygiene</b></p> <p>21 <b>and Toxicology, which operated until 1949 and</b></p> <p>22 <b>contained a great many abstracts, as well.</b></p> <p>23 Q. Are you aware, Dr. Castleman, of</p> <p>24 any report in the medical literature of a person</p> <p>25 getting mesothelioma that was attributed to an</p>



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<p>1 Castleman, ScD</p> <p>2 occupational exposure that the person's spouse</p> <p>3 had experienced before the Newhouse &amp; Thompson</p> <p>4 report in 1965?</p> <p>5 <b>A. With respect to other substances,</b></p> <p>6 <b>there were certainly cases.</b></p> <p>7 <b>With respect to asbestos, if that's</b></p> <p>8 <b>what you were meaning to ask about, the earliest</b></p> <p>9 <b>household contact case, I believe, was one of</b></p> <p>10 <b>the cases in Wagner's report -- W-A-G-N-E-R --</b></p> <p>11 <b>in 1960. It was the daughter of somebody who</b></p> <p>12 <b>had occupational exposure to asbestos.</b></p> <p>13 Q. And in the Wagner report in 1960,</p> <p>14 is there a description there that the households</p> <p>15 in which those people lived were either in or in</p> <p>16 very close proximity to the asbestos mines?</p> <p>17 <b>A. Some of them were. I don't think</b></p> <p>18 <b>that that kind of comment can be stated in a</b></p> <p>19 <b>blanket way in describing the cases.</b></p> <p>20 Q. With regard to the specific</p> <p>21 instance that you brought up of the daughter, is</p> <p>22 it clear to you from reviewing Wagner that the</p> <p>23 exposure to asbestos that that woman experienced</p> <p>24 was asbestos that was brought home by her father</p> <p>25 or asbestos that she would have had an exposure</p>	<p>1 Castleman, ScD</p> <p>2 have a problem.</p> <p>3 MR. FISCHER: Thank you.</p> <p>4 THE WITNESS: If you say so,</p> <p>5 Mr. Modesitt, I believe you.</p> <p>6 MR. MODESITT: We'll be done.</p> <p>7 BY MR. FISCHER:</p> <p>8 Q. Dr. Castleman, when did cautionary</p> <p>9 information about asbestos first appear on</p> <p>10 asbestos-contained products?</p> <p>11 <b>A. It's not clear to me whether there</b></p> <p>12 <b>was any health warning on products made by -- I</b></p> <p>13 <b>think the company was called Cafco.</b></p> <p>14 Q. United States Mineral?</p> <p>15 <b>A. United States Mineral. Thank you.</b></p> <p>16 <b>I make reference to it at the</b></p> <p>17 <b>beginning of Chapter 5. There were some</b></p> <p>18 <b>documents indicating that they had a sprayed</b></p> <p>19 <b>asbestos product that they were seriously</b></p> <p>20 <b>considering warning people about at the very end</b></p> <p>21 <b>of 1962, and I'm not sure exactly what happened</b></p> <p>22 <b>as to the warnings on such products.</b></p> <p>23 <b>The next thing would be the Johns</b></p> <p>24 <b>Manville label in April, I think, of 1964</b></p> <p>25 <b>where -- and this is documented in several ways,</b></p>
Page 50	Page 52
<p>1 Castleman, ScD</p> <p>2 to merely as a result of living near the mine?</p> <p>3 <b>A. I don't recall any detail exactly</b></p> <p>4 <b>what Wagner said about the environmental</b></p> <p>5 <b>exposure and the household contact exposure.</b></p> <p>6 <b>There were 33 cases in his report, and they were</b></p> <p>7 <b>generally described fairly briefly individually.</b></p> <p>8 MR. WALKER: Mr. Fischer, in</p> <p>9 case you're either reloading or</p> <p>10 going to another subject or</p> <p>11 something, I notice that we've been</p> <p>12 going -- and I didn't record our</p> <p>13 start time -- but for a while.</p> <p>14 THE WITNESS: About an hour.</p> <p>15 MR. WALKER: And I just want</p> <p>16 to make sure that amongst the</p> <p>17 defense, there's some agreement as</p> <p>18 to how the time is going to be</p> <p>19 shared so that we don't run into the</p> <p>20 situation that some defendant is</p> <p>21 going to say, well, I really would</p> <p>22 have put that witness away but for</p> <p>23 the fact that OI just took too look</p> <p>24 to start --</p> <p>25 MR. MODESITT: We will not</p>	<p>1 Castleman, ScD</p> <p>2 <b>so I am satisfied that it actually happened --</b></p> <p>3 <b>Johns Manville put a very mild warning on their</b></p> <p>4 <b>containers of insulation.</b></p> <p>5 Q. And when you say --</p> <p>6 <b>A. A health warning basically saying</b></p> <p>7 <b>that inhalation of asbestos in excessive</b></p> <p>8 <b>quantities over long periods of time may be</b></p> <p>9 <b>harmful.</b></p> <p>10 <b>And then they even try to expand</b></p> <p>11 <b>the vocabularies of the workers by advising that</b></p> <p>12 <b>they use respirators approved for</b></p> <p>13 <b>pneumoconiosis-producing dust in its warning</b></p> <p>14 <b>label.</b></p> <p>15 Q. Do I understand you correctly,</p> <p>16 Doctor, that you just don't know one way or the</p> <p>17 other whether or not United States Mineral put a</p> <p>18 warning or caution statement on its Cafco</p> <p>19 products prior to 1964?</p> <p>20 <b>A. That's right. I just -- the</b></p> <p>21 <b>document trail that I had sort of -- it's less</b></p> <p>22 <b>than conclusive in establishing that.</b></p> <p>23 Q. Next in the chronology, at least</p> <p>24 with regard to cautions or warnings, would be</p> <p>25 the Johns Manville statement in April of '64?</p>

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<p>1 Castleman, ScD</p> <p>2 <b>A. Right.</b></p> <p>3 Q. When you said that they put it on</p> <p>4 their insulation products, what do you mean by</p> <p>5 "insulation products" of Johns Manville?</p> <p>6 <b>A. The shipping cartons of</b></p> <p>7 <b>thermobestos. And if they were still making</b></p> <p>8 <b>magnesium insulation, I suppose that would have</b></p> <p>9 <b>been covered, too.</b></p> <p>10 Q. And did Johns Manville manufacture,</p> <p>11 of course, asbestos-containing products other</p> <p>12 than thermobestos and its magnesia products,</p> <p>13 right?</p> <p>14 <b>A. They manufactured lots of asbestos</b></p> <p>15 <b>products. They didn't put warnings on any of</b></p> <p>16 <b>those as far as I know, and they didn't put</b></p> <p>17 <b>warnings on the sacks of asbestos they were</b></p> <p>18 <b>shipping into this country from Canada, either,</b></p> <p>19 <b>not for another four or five years.</b></p> <p>20 Q. When did the warnings first appear</p> <p>21 on the asbestos fiber containers?</p> <p>22 <b>A. That appears to have happened</b></p> <p>23 <b>sometime in the beginning of 1969.</b></p> <p>24 Q. How about with regard to other</p> <p>25 products that had been fabricated using asbestos</p>	<p>1 Castleman, ScD</p> <p>2 <b>A. Nothing comes to mind.</b></p> <p>3 Q. When did Owens Corning first place</p> <p>4 a warning or caution on its products that</p> <p>5 contained asbestos?</p> <p>6 <b>A. It appears to have happened --</b></p> <p>7 <b>well, I think that happened in 1970, but I'm not</b></p> <p>8 <b>sure.</b></p> <p>9 Q. How about Pittsburgh Corning, when</p> <p>10 did it first place a warning on its products, if</p> <p>11 ever?</p> <p>12 <b>A. I don't think they ever did.</b></p> <p>13 Q. How about Unarco?</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. Do you know if Unarco had any</p> <p>16 involvement in the Illinois Manufacturing --</p> <p>17 Manufacturers' Association?</p> <p>18 <b>A. I don't know if they did. This may</b></p> <p>19 <b>have been before Unarco was making asbestos</b></p> <p>20 <b>insulation in Bloomington.</b></p> <p>21 Q. Well, we were talking about the</p> <p>22 1930s specifically before, but let me ask you</p> <p>23 just generally speaking whether you know if</p> <p>24 Unarco had any participation in the Illinois</p> <p>25 Manufacturers' Association at any period of</p>
Page 54	Page 56
<p>1 Castleman, ScD</p> <p>2 as a raw material; when, if ever, did Johns</p> <p>3 Manville put warnings on those products?</p> <p>4 <b>A. I don't remember specific dates on</b></p> <p>5 <b>things like asbestos cement sheets. I can't</b></p> <p>6 <b>think of anything else they made that might have</b></p> <p>7 <b>had warnings on it before 1972, when it was</b></p> <p>8 <b>required by the Department of Labor.</b></p> <p>9 Q. How about Transite Board?</p> <p>10 <b>A. That's what I'm thinking of,</b></p> <p>11 <b>asbestos cement sheets. I don't know -- I think</b></p> <p>12 <b>there was an article published by Keith Harless.</b></p> <p>13 <b>And he made reference to asbestos cement --</b></p> <p>14 <b>well, asbestos board products from Johns</b></p> <p>15 <b>Manville and noted that there -- if I remember</b></p> <p>16 <b>this right, he noted that there weren't warning</b></p> <p>17 <b>labels on the products. And I'm just trying to</b></p> <p>18 <b>see when that was published.</b></p> <p>19 <b>(Perusing book.) It might have</b></p> <p>20 <b>been in 1978.</b></p> <p>21 Q. Let me ask it this way,</p> <p>22 Dr. Castleman: Are you aware of any other</p> <p>23 products on which Johns Manville placed a</p> <p>24 warning prior to 1972 other than thermobestos or</p> <p>25 similar kinds of insulation and asbestos fiber?</p>	<p>1 Castleman, ScD</p> <p>2 time.</p> <p>3 <b>A. Well, apparently they did have a</b></p> <p>4 <b>plant in Illinois in Cicero starting in 1926,</b></p> <p>5 <b>so -- and I have it recorded as a unibestos</b></p> <p>6 <b>plant, so I had forgotten about that. So</b></p> <p>7 <b>apparently they were a manufacturer in Illinois</b></p> <p>8 <b>in the period of interest to us at this</b></p> <p>9 <b>discussion, at this deposition.</b></p> <p>10 Q. Do you know whether or not Unarco</p> <p>11 was ever a member of the Illinois Manufacturers'</p> <p>12 Association?</p> <p>13 <b>A. No, I don't.</b></p> <p>14 Q. Do you know whether Unarco had any</p> <p>15 role or participation in the legislation that</p> <p>16 was offered and passed about occupational</p> <p>17 disease in Illinois in the 1930s?</p> <p>18 <b>A. I don't know about that.</b></p> <p>19 Q. Other than Johns Manville and Owens</p> <p>20 Corning, did any other manufacturer of</p> <p>21 asbestos-containing pipe insulation or block</p> <p>22 insulation place a warning or caution label on</p> <p>23 its product prior to 1972?</p> <p>24 <b>A. I believe that EaglePicher did in</b></p> <p>25 <b>1964. There are historic documents, letters to</b></p>

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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>customers and the memorable "Don't shout caution</b></p> <p>3 <b>from the rooftops" internal memo that I recall</b></p> <p>4 <b>relating to that. That's one company.</b></p> <p>5 Q. How about Philip Carey, are you</p> <p>6 aware whether Philip Carey ever placed a warning</p> <p>7 on its asbestos-containing pipe insulation or</p> <p>8 blocks prior to '72?</p> <p>9 <b>A. I don't know if they did.</b></p> <p>10 Q. In what countries were there</p> <p>11 production of products using asbestos as a raw</p> <p>12 material in the 1950s and '60s?</p> <p>13 MR. WALKER: You mean like</p> <p>14 nations?</p> <p>15 MR. FISCHER: Yes, sir.</p> <p>16 <b>A. Well, it was used in lots of</b></p> <p>17 <b>countries. What do you mean? You mean asbestos</b></p> <p>18 <b>mining or just use of asbestos?</b></p> <p>19 Q. No. I'm talking about the</p> <p>20 fabrication of products using asbestos as a raw</p> <p>21 material.</p> <p>22 <b>A. It was very widespread. I think</b></p> <p>23 <b>most industrial countries and a lot of</b></p> <p>24 <b>developing countries had asbestos plants. I</b></p> <p>25 <b>mean, India had asbestos plants, at least as far</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>A. I think I recall seeing something</b></p> <p>3 <b>like that on a sack of asbestos from Russia at a</b></p> <p>4 <b>plant in Vietnam.</b></p> <p>5 Q. When would you have seen that?</p> <p>6 <b>A. 1991.</b></p> <p>7 Q. Is that the --</p> <p>8 <b>A. The warning was in English.</b></p> <p>9 Q. Is that the first time that you</p> <p>10 would be aware of any warning or caution</p> <p>11 relating to the health effects of asbestos on</p> <p>12 asbestos or asbestos-containing products</p> <p>13 originating in the Soviet Union?</p> <p>14 <b>A. Yes. But I haven't made any real</b></p> <p>15 <b>investigation about that. This was just an</b></p> <p>16 <b>incidental observation.</b></p> <p>17 Q. How about asbestos-containing</p> <p>18 products manufactured in Europe; are you aware</p> <p>19 of any warnings or cautions, labels being placed</p> <p>20 on asbestos-containing products manufactured in</p> <p>21 Europe at any time?</p> <p>22 <b>A. Yes. I discuss this in Chapter 11</b></p> <p>23 <b>of the book.</b></p> <p>24 <b>(Perusing book.) I even have a</b></p> <p>25 <b>picture of the label that was developed by the</b></p>
Page 58	Page 60
<p>1 <b>Castleman, ScD</b></p> <p>2 <b>back as 1937.</b></p> <p>3 Q. When did warnings or caution labels</p> <p>4 first appear on any asbestos-containing product</p> <p>5 manufactured in India?</p> <p>6 <b>A. I don't know if they even do it</b></p> <p>7 <b>today. The rest of the world, as far as I've</b></p> <p>8 <b>been able to determine, lagged behind the</b></p> <p>9 <b>United States on the matter of warning labels on</b></p> <p>10 <b>asbestos products.</b></p> <p>11 <b>I guess I should say the rest of</b></p> <p>12 <b>the world's companies and governments lagged</b></p> <p>13 <b>behind the labeling that initially started with</b></p> <p>14 <b>some asbestos manufacturers in the United States</b></p> <p>15 <b>and then became a matter of government</b></p> <p>16 <b>requirement.</b></p> <p>17 Q. And, in fact, in many nations or</p> <p>18 countries, asbestos manufacturing is and was</p> <p>19 government-owned, right?</p> <p>20 <b>A. Well, that was, I suppose, the case</b></p> <p>21 <b>in the old Soviet Union and China.</b></p> <p>22 Q. Did asbestos-containing products</p> <p>23 manufactured in the Soviet Union or China ever</p> <p>24 bear warnings or cautions relating to the health</p> <p>25 effects of asbestos?</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>British Asbestos Industry (indicating).</b></p> <p>3 Q. The take care with asbestos</p> <p>4 picture?</p> <p>5 <b>A. Right. Right. So I thought this</b></p> <p>6 <b>was a marvelous creation from the land of</b></p> <p>7 <b>understatement and ambiguity.</b></p> <p>8 Q. And it looks like on the very next</p> <p>9 page there appears to be a warning that is in</p> <p>10 Spanish?</p> <p>11 <b>A. Yes. This other warning, although</b></p> <p>12 <b>it's in Spanish, is much clearer in</b></p> <p>13 <b>communicating true dangers of asbestos. Even to</b></p> <p>14 <b>people who don't speak Spanish, the word cáncer</b></p> <p>15 <b>--</b></p> <p>16 Q. C-A-N-C-E-R?</p> <p>17 <b>A. -- C-A-N-C-E-R -- is understandable</b></p> <p>18 <b>and so is the skull and crossbones.</b></p> <p>19 Q. And that's on page 789 of your</p> <p>20 book; is that correct?</p> <p>21 <b>A. Right.</b></p> <p>22 Q. And when did that first appear on</p> <p>23 any product, that you're aware of?</p> <p>24 <b>A. Which one?</b></p> <p>25 Q. The one on page 789 of the book.</p>

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<p>1 Castleman, ScD</p> <p>2 <b>A. Oh, I don't think that ever</b></p> <p>3 <b>appeared on a product. That was a protest</b></p> <p>4 <b>poster hung in schools made of asbestos cement</b></p> <p>5 <b>by Puerto Rican teachers.</b></p> <p>6 Q. Okay. The --</p> <p>7 <b>A. That would have been in the late</b></p> <p>8 <b>'70s, I think, '79, 1980.</b></p> <p>9 Q. How about the label on page 788,</p> <p>10 that did appear on products; is that correct?</p> <p>11 <b>A. I think so.</b></p> <p>12 Q. And when did it appear on products?</p> <p>13 <b>A. It was -- as the text below says,</b></p> <p>14 <b>it was introduced in Britain in 1976 and later</b></p> <p>15 <b>adopted by the Asbestos International</b></p> <p>16 <b>Association, and that they were satisfied that</b></p> <p>17 <b>this label had no adverse effect on sales in</b></p> <p>18 <b>Western Europe and Australasia.</b></p> <p>19 Q. Is that a T&amp;N document?</p> <p>20 <b>A. The reference?</b></p> <p>21 Q. Yes.</p> <p>22 <b>A. Let's see. Probably it is.</b></p> <p>23 <b>(Perusing book.) I don't know. If</b></p> <p>24 <b>it's a document that came from Turner &amp; Newall,</b></p> <p>25 <b>it's not referenced in that way.</b></p>	<p>1 Castleman, ScD</p> <p>2 ahead of Britain or Europe with regard to</p> <p>3 caution or warning labels, right?</p> <p>4 <b>A. Right. And some of the T&amp;N</b></p> <p>5 <b>documents talk about how the Americans were a</b></p> <p>6 <b>lot more nervous about this matter of warning</b></p> <p>7 <b>labels because of the product liability cases in</b></p> <p>8 <b>the United States, which the Europeans and the</b></p> <p>9 <b>Brits generally didn't have to worry about.</b></p> <p>10 Q. One of the things that you've done</p> <p>11 with your professional life is spent some time</p> <p>12 outside of the United States urging bans on</p> <p>13 asbestos use, right?</p> <p>14 <b>A. Well, working with other public</b></p> <p>15 <b>health workers in connection with legislation</b></p> <p>16 <b>like that, yes.</b></p> <p>17 Q. Would you agree that every country</p> <p>18 that has used asbestos industrially has had</p> <p>19 mesothelioma incidents?</p> <p>20 <b>A. Well, I think that's probably true,</b></p> <p>21 <b>although it's not documented in every case. And</b></p> <p>22 <b>there are lots of countries where their cases</b></p> <p>23 <b>just go uncounted, undiagnosed, unrecorded in</b></p> <p>24 <b>the medical journals.</b></p> <p>25 Q. Have you ever tried to determine</p>
Page 62	Page 64
<p>1 <b>Castleman, ScD</b></p> <p>2 <b>It's a 1984 letter from the</b></p> <p>3 <b>Asbestos International Association guy to the</b></p> <p>4 <b>Asbestos Institute fellow in Canada.</b></p> <p>5 Q. If we exclude Great Britain,</p> <p>6 Doctor, are you aware of any warnings or</p> <p>7 cautions that have ever appeared on</p> <p>8 asbestos-containing products manufactured in</p> <p>9 Europe except for Great Britain?</p> <p>10 <b>A. Nothing comes to mind. I may have</b></p> <p>11 <b>discussed other countries in Chapter 11, but I</b></p> <p>12 <b>can't remember anything. I mean, it seems like</b></p> <p>13 <b>the British industry took the lead in dealing</b></p> <p>14 <b>with this question of warning labels. That's</b></p> <p>15 <b>expressed very clearly in a meeting of the</b></p> <p>16 <b>Asbestos International Association in 1978, that</b></p> <p>17 <b>they felt that they'd rather have no warning</b></p> <p>18 <b>label at all, but if they had to put one on,</b></p> <p>19 <b>that they would like to go with this rather than</b></p> <p>20 <b>have to worry about the skull and crossbones or</b></p> <p>21 <b>the word "cancer" being imposed on them by</b></p> <p>22 <b>government authorities.</b></p> <p>23 Q. Now, when you say the British</p> <p>24 industry took the lead, you mean in Europe; we</p> <p>25 already established that the United States was</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 whether mesothelioma incidents in the</p> <p>3 United States is more or less than in other</p> <p>4 countries that have used asbestos industrially?</p> <p>5 <b>A. I don't think that there would be</b></p> <p>6 <b>any way of making that kind of comparison. So</b></p> <p>7 <b>much depends on the recording of this data, and</b></p> <p>8 <b>different countries do it in different ways.</b></p> <p>9 <b>Lots of other countries have a national health</b></p> <p>10 <b>service that serves as a good way of gathering</b></p> <p>11 <b>information like this. We don't have anything</b></p> <p>12 <b>of the kind.</b></p> <p>13 Q. Dr. Selikoff published his studies</p> <p>14 of insulators beginning in 1964, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Do you know when Dr. Selikoff began</p> <p>17 his work that led to the publication in 1964?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Do you know how that work was</p> <p>20 funded?</p> <p>21 <b>A. No. All I know is that the</b></p> <p>22 <b>Insulation Workers Union cooperated, but I don't</b></p> <p>23 <b>know if they were involved in funding their</b></p> <p>24 <b>work, or not initially.</b></p> <p>25 Q. What kind of cooperation did they</p>



<p style="text-align: right;">Page 65</p> <p>1 Castleman, ScD</p> <p>2 give?</p> <p>3 <b>A. Well, I understand that they gave</b></p> <p>4 <b>him access to their death cards. And, of</b></p> <p>5 <b>course, they gave him access to their union</b></p> <p>6 <b>membership rules so that he was able to do the</b></p> <p>7 <b>mortality study he conducted by knowing who the</b></p> <p>8 <b>members of the union were as of the beginning of</b></p> <p>9 <b>1942, and then doing the follow-up on them to</b></p> <p>10 <b>track down the death certificates and do the</b></p> <p>11 <b>statistical analysis.</b></p> <p>12 <b>Q. Dr. Selikoff's studies eventually</b></p> <p>13 <b>included physical examinations of the members of</b></p> <p>14 <b>the union, right, in New York and New Jersey?</b></p> <p>15 <b>A. Right. I mean, after the mortality</b></p> <p>16 <b>study, or sometime maybe even before it was</b></p> <p>17 <b>published, Selikoff had sufficiently open</b></p> <p>18 <b>relations with the union locals in New York and</b></p> <p>19 <b>New Jersey that he was able to start doing</b></p> <p>20 <b>examinations of the members of the union and</b></p> <p>21 <b>develop morbidity data on the prevalence of</b></p> <p>22 <b>asbestosis among the workers.</b></p> <p>23 <b>Q. And one of Dr. Selikoff's many</b></p> <p>24 <b>contributions to medicine and science is that he</b></p> <p>25 <b>was successful publicizing much of the</b></p>	<p style="text-align: right;">Page 67</p> <p>1 <b>Castleman, ScD</b></p> <p>2 <b>the use of the word "successful" and make sure</b></p> <p>3 <b>that it's clear that, although Selikoff was an</b></p> <p>4 <b>extraordinary individual and made very important</b></p> <p>5 <b>contributions, there were real limits to</b></p> <p>6 <b>anyone's ability in getting the word out to the</b></p> <p>7 <b>working people in this country about the lethal</b></p> <p>8 <b>dangers of asbestos when he started doing this</b></p> <p>9 <b>in the 1960s and into the '70s.</b></p> <p>10 <b>Q. Among the groups that Dr. Selikoff</b></p> <p>11 <b>spoke to were the insulators themselves, right?</b></p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q. He spoke at at least one of their</b></p> <p>14 <b>annual conventions about the health risks posed</b></p> <p>15 <b>by exposure to asbestos?</b></p> <p>16 <b>A. Well, they had conventions of their</b></p> <p>17 <b>union officers it seems every five years, and he</b></p> <p>18 <b>spoke at several of these meetings about his</b></p> <p>19 <b>research.</b></p> <p>20 <b>Q. Are you suggesting the meetings</b></p> <p>21 <b>were limited to union officers?</b></p> <p>22 <b>MR. WALKER: Who did you --</b></p> <p>23 <b>say that again, Matt.</b></p> <p>24 <b>MR. FISCHER: Limited to</b></p> <p>25 <b>union officers.</b></p>
<p style="text-align: right;">Page 66</p> <p>1 Castleman, ScD</p> <p>2 experience with regard to insulation workers and</p> <p>3 mesothelioma and lung cancer, right?</p> <p>4 <b>A. Well, he was certainly much more</b></p> <p>5 <b>willing than most doctors to speak to the media.</b></p> <p>6 <b>He understood that as part of his professional</b></p> <p>7 <b>role as a public health professional.</b></p> <p>8 <b>Q. And he spoke to --</b></p> <p>9 <b>A. But to say that he was successful,</b></p> <p>10 <b>well, I think this needs to be explained before</b></p> <p>11 <b>it can be simply answered.</b></p> <p>12 <b>It's certainly true that he was</b></p> <p>13 <b>successful in doing a number of interviews with</b></p> <p>14 <b>the media and getting coverage on the various</b></p> <p>15 <b>types of media. But whether he was successful</b></p> <p>16 <b>in reaching the ordinary working people in this</b></p> <p>17 <b>country is another question.</b></p> <p>18 <b>It's certainly great to get all</b></p> <p>19 <b>those articles he got in the New York Times and</b></p> <p>20 <b>stuff like that, but there are a lot of people</b></p> <p>21 <b>in this country that don't read the New York</b></p> <p>22 <b>Times or Wall Street Journal or the other</b></p> <p>23 <b>journals and newspapers and magazines that</b></p> <p>24 <b>Selikoff was quoted in.</b></p> <p>25 <b>So I just want to be careful about</b></p>	<p style="text-align: right;">Page 68</p> <p>1 Castleman, ScD</p> <p>2 <b>MR. WALKER: The first part</b></p> <p>3 <b>about suggesting.</b></p> <p>4 <b>BY MR. FISCHER:</b></p> <p>5 <b>Q. Are you suggesting that the</b></p> <p>6 <b>meetings -- let me ask it another way: Are you</b></p> <p>7 <b>suggesting that the meetings at which</b></p> <p>8 <b>Dr. Selikoff addressed members of the insulators</b></p> <p>9 <b>union were limited to union officers?</b></p> <p>10 <b>A. I don't know one way or the other,</b></p> <p>11 <b>but there were meetings that were held someplace</b></p> <p>12 <b>in the United States, and they were generally</b></p> <p>13 <b>attended by business agents and people like</b></p> <p>14 <b>that.</b></p> <p>15 <b>I suppose that people from the</b></p> <p>16 <b>union local in the city where the meeting was</b></p> <p>17 <b>held would have been free to come if they were</b></p> <p>18 <b>off work that day and they could make it. I</b></p> <p>19 <b>don't really know.</b></p> <p>20 <b>Q. And that's all I'm trying to find</b></p> <p>21 <b>out, you know, in terms of any limitation on who</b></p> <p>22 <b>could attend, you don't know one way or the</b></p> <p>23 <b>other?</b></p> <p>24 <b>A. That's right.</b></p> <p>25 <b>MR. WALKER: Just to see if</b></p>

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<p>1 Castleman, ScD</p> <p>2 Mr. Modesitt is awake, a good</p> <p>3 illustration of that point goes like</p> <p>4 this: Bobby Knight is in Chicago</p> <p>5 playing and he needs a new suit.</p> <p>6 So he goes into a tailor and</p> <p>7 the tailor looks at him and says,</p> <p>8 "Well, we can make you a suit." He</p> <p>9 says, "I believe you're about a 42</p> <p>10 regular."</p> <p>11 And Bobby says, "No, no." He</p> <p>12 says, "How can that be?" He says,</p> <p>13 "My tailor in Bloomington says I'm a</p> <p>14 44 long."</p> <p>15 At which time the tailor in</p> <p>16 Chicago says, "You're not such a big</p> <p>17 man in Chicago as you are in</p> <p>18 Bloomington."</p> <p>19 Just wanted to check on you,</p> <p>20 Ray.</p> <p>21 THE WITNESS: Okay, why don't</p> <p>22 we give the reporter a break. I</p> <p>23 think we've been going for an hour.</p> <p>24 MR. FISCHER: Sure.</p> <p>25 (Whereupon at 1:25 p.m., a</p>	<p>1 Castleman, ScD</p> <p>2 health hazards of asbestos exposure during the</p> <p>3 course of the physical examinations that they</p> <p>4 provided to those workers?</p> <p>5 <b>A. I don't know what they told the</b></p> <p>6 <b>workers during the physical examinations.</b></p> <p>7 Q. Have you ever tried to investigate</p> <p>8 what the workers were told during those physical</p> <p>9 examinations?</p> <p>10 <b>A. No.</b></p> <p>11 Q. You spoke to Dr. Selikoff before he</p> <p>12 had died; is that correct?</p> <p>13 <b>A. I spoke to Dr. Selikoff on a number</b></p> <p>14 <b>of occasions between 1971 and 1992 when he died.</b></p> <p>15 Q. Did you ever talk to him about</p> <p>16 whether or not the Insulators Union participated</p> <p>17 in any way of the funding of this study?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Did you ever talk to him about what</p> <p>20 the insulators were told about the health</p> <p>21 effects of asbestos by Dr. Selikoff?</p> <p>22 <b>A. I don't know what he told me about</b></p> <p>23 <b>that.</b></p> <p>24 Q. I'm asking you whether you spoke</p> <p>25 about that with Dr. Selikoff.</p>
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<p>1 Castleman, ScD</p> <p>2 recess was taken until 1:33 p.m.)</p> <p>3 (The deposition resumed with</p> <p>4 all parties present.)</p> <p>5 B A R R Y I. C A S T L E M A N, ScD, resumed and</p> <p>6 testified further as follows:</p> <p>7 BY MR. FISCHER:</p> <p>8 Q. You mentioned that Dr. Selikoff had</p> <p>9 the cooperation of the Insulators Union.</p> <p>10 Did I understand you correctly that</p> <p>11 you don't know whether or not the union</p> <p>12 participated in the funding one way or the</p> <p>13 other?</p> <p>14 <b>A. That's right, I don't know.</b></p> <p>15 Q. And I take it you don't know</p> <p>16 whether or not the individual union members had</p> <p>17 any part of their dues go towards Dr. Selikoff's</p> <p>18 study?</p> <p>19 <b>A. I don't know if there was any</b></p> <p>20 <b>arrangement of that kind back in the beginning.</b></p> <p>21 <b>I think that that was something that developed</b></p> <p>22 <b>later, but I don't know when.</b></p> <p>23 Q. Do you have any knowledge one way</p> <p>24 or the other about whether or not Dr. Selikoff</p> <p>25 and his team advised the insulators of the</p>	<p>1 Castleman, ScD</p> <p>2 <b>A. Oh, I'm pretty sure I didn't. I</b></p> <p>3 <b>don't recall ever talking to him about that.</b></p> <p>4 Q. Did you ever ask Dr. Selikoff or</p> <p>5 anyone who worked at Mount Sinai about what the</p> <p>6 workers were told about the health effects of</p> <p>7 asbestos during the course of physical</p> <p>8 examinations provided to them?</p> <p>9 <b>A. No.</b></p> <p>10 Q. When I asked you about the Newhouse</p> <p>11 &amp; Thompson study in '65, you had mentioned that</p> <p>12 it was your understanding that one of the cases</p> <p>13 in Dr. Wagner's case series in 1960 may have</p> <p>14 involved a household exposure; is that correct?</p> <p>15 <b>A. Right.</b></p> <p>16 Q. Anything else prior to '65 that</p> <p>17 you're aware of where there was a publication of</p> <p>18 an instance where a person contracted</p> <p>19 mesothelioma that was attributed to asbestos</p> <p>20 exposure that had been experienced by a</p> <p>21 household member in the household member's work?</p> <p>22 <b>A. Nothing comes to mind.</b></p> <p>23 MR. FISCHER: Those are all</p> <p>24 the questions I have for you,</p> <p>25 Doctor. Thank you.</p>

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<p>1 Castleman, ScD</p> <p>2 EXAMINATION</p> <p>3 BY MR. MODESITT:</p> <p>4 Q. Doctor, I would like to go back, if</p> <p>5 I may, and ask a few additional questions on the</p> <p>6 Illinois Manufacturers' Association.</p> <p>7 Was the trial that you referred --</p> <p>8 you referred to a trial, I believe, in 2007.</p> <p>9 Do you remember what state that was</p> <p>10 in?</p> <p>11 A. <b>Virginia.</b></p> <p>12 Q. And I know Bobby Hatten is in</p> <p>13 Virginia. Do you think he might have been the</p> <p>14 counsel that you worked with on that case?</p> <p>15 A. <b>Yes.</b></p> <p>16 Q. You used two words -- strike that.</p> <p>17 You referred to two different</p> <p>18 companies. One you referred to is Crane Co.,</p> <p>19 and then you referred to a company called</p> <p>20 John Crane. Do you understand those to be two</p> <p>21 different and distinct companies?</p> <p>22 A. <b>I do.</b></p> <p>23 Q. Crane Co. made valves and</p> <p>24 John Crane made gaskets. Is that your</p> <p>25 recollection?</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 Q. And does the inference come from</p> <p>3 the fact that John Crane's Manufacturing Company</p> <p>4 was in Chicago?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. And I'm just thinking to find out</p> <p>7 where you get the inference from. That's the</p> <p>8 inference --</p> <p>9 A. <b>He was in the Chicago area, I</b></p> <p>10 <b>think, yes.</b></p> <p>11 Q. So that was the inference in your</p> <p>12 mind?</p> <p>13 A. <b>Right.</b></p> <p>14 Q. Is there anything that you saw, any</p> <p>15 documents that you saw that would suggest that</p> <p>16 American Brake Shoe or American Brake Shoe and</p> <p>17 Foundry, American Brake Company, Abex, any of</p> <p>18 those entities in the predecessor history line</p> <p>19 of Pneumo Abex were involved in the Illinois</p> <p>20 Manufacturers' Association?</p> <p>21 A. <b>No, I haven't seen anything. Like</b></p> <p>22 <b>I said, I've seen very little documentation, but</b></p> <p>23 <b>what I've seen doesn't include any explicit</b></p> <p>24 <b>reference to Abex or its predecessors.</b></p> <p>25 Q. Okay. But you do believe it</p>
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<p>1 Castleman, ScD</p> <p>2 A. <b>I believe that those two statements</b></p> <p>3 <b>are correct.</b></p> <p>4 Q. Did your information reveal that</p> <p>5 one or that both of those companies were</p> <p>6 involved with the Illinois Manufacturers'</p> <p>7 Association back in the early- to mid-1930s?</p> <p>8 A. <b>The documentation I've seen shows</b></p> <p>9 <b>that there was some involvement by Crane Co.</b></p> <p>10 <b>The involvement by Crane or John Crane Company,</b></p> <p>11 <b>that that company's involvement was inferred.</b></p> <p>12 <b>But I have not seen any</b></p> <p>13 <b>documentation showing that they were actually</b></p> <p>14 <b>involved.</b></p> <p>15 (Telephone interruption.)</p> <p>16 (Discussion off the record.)</p> <p>17 BY MR. MODESITT:</p> <p>18 Q. When you say "inferred," what do</p> <p>19 you mean by that?</p> <p>20 A. <b>Well, the documentation I've seen</b></p> <p>21 <b>indicates that in order for companies to be free</b></p> <p>22 <b>from civil suits or exposure to civil suits,</b></p> <p>23 <b>they had to accept the jurisdiction of the State</b></p> <p>24 <b>Workers' Compensation Law in 1936 when it was</b></p> <p>25 <b>enacted.</b></p>	<p>1 Castleman, ScD</p> <p>2 included reference to Johns Manville?</p> <p>3 A. <b>No. I have been told by Mr. Walker</b></p> <p>4 <b>that some of the newer documents -- I shouldn't</b></p> <p>5 <b>say newer. The documents that he has unearthed</b></p> <p>6 <b>refer to Mr. Vandiver Brown being involved. And</b></p> <p>7 <b>that's something I don't recall. I just don't</b></p> <p>8 <b>recall having seen Johns Manville named in the</b></p> <p>9 <b>other documents I've seen, which are few.</b></p> <p>10 Q. And you're not saying that he was</p> <p>11 because you haven't seen any documents yet from</p> <p>12 Mr. Walker?</p> <p>13 A. <b>Yes. I think I've been</b></p> <p>14 <b>appropriately cautious about what I've said in</b></p> <p>15 <b>this deposition about the documents I haven't</b></p> <p>16 <b>seen.</b></p> <p>17 Q. And so you're not prepared today to</p> <p>18 impart any information regarding Vandiver</p> <p>19 Brown's role, if any, with the Illinois</p> <p>20 Manufacturers' Association at any time,</p> <p>21 including the mid-1930s?</p> <p>22 A. <b>Right.</b></p> <p>23 Q. I know Mr. Al -- is it Donnay?</p> <p>24 A. <b>D-O-N-N-A-Y, Donnay.</b></p> <p>25 Q. "Donnay."</p>

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<p>1 Castleman, ScD</p> <p>2 He has collected for you, and I</p> <p>3 have even purchased from him, various documents</p> <p>4 that you have secured.</p> <p>5 Is there anything in the</p> <p>6 information that he has collected for you that</p> <p>7 would include the Illinois Manufacturers'</p> <p>8 Association?</p> <p>9 <b>A. I don't think there are any</b></p> <p>10 <b>Illinois Manufacturers' Association documents in</b></p> <p>11 <b>the -- it's certainly not in the Abex file.</b></p> <p>12 <b>They would probably be in the John Crane file,</b></p> <p>13 <b>whatever I have.</b></p> <p>14 Q. Or the Crane -- is there a file for</p> <p>15 Crane Co.?</p> <p>16 <b>A. Yes, it might be in the Crane Co.</b></p> <p>17 <b>file, too.</b></p> <p>18 Q. So if there is anything on that, is</p> <p>19 it your best -- I hate to use the word guess,</p> <p>20 but best surmise that it would be in one of</p> <p>21 those other files?</p> <p>22 <b>A. Right.</b></p> <p>23 Q. Because in the list that I just</p> <p>24 recently got by e-mail from Mr. Donnay, I looked</p> <p>25 and there was no Illinois Manufacturers'</p>	<p>1 Castleman, ScD</p> <p>2 <b>that, you know, scattered news articles that</b></p> <p>3 <b>might appear once in a decade in the Los Angeles</b></p> <p>4 <b>Times or something constitute much in the way of</b></p> <p>5 <b>notice to the ordinary newspaper reader who --</b></p> <p>6 <b>or the ordinary citizen who might not even be a</b></p> <p>7 <b>regular reader of a newspaper.</b></p> <p>8 <b>But to companies that were in the</b></p> <p>9 <b>business of using asbestos, such articles might</b></p> <p>10 <b>constitute a more significant or a more</b></p> <p>11 <b>noticeable type of alert to see these kinds of</b></p> <p>12 <b>things in the public domain if they're</b></p> <p>13 <b>published, like the Detroit -- one of the</b></p> <p>14 <b>Detroit papers publishing an article about brake</b></p> <p>15 <b>linings being hazardous around 1972 or so.</b></p> <p>16 <b>So I don't think that would have</b></p> <p>17 <b>come -- that would have maybe gotten more</b></p> <p>18 <b>attention from people who worked for the big</b></p> <p>19 <b>automobile companies than --</b></p> <p>20 Q. Would you agree --</p> <p>21 <b>A. -- than others.</b></p> <p>22 Q. Excuse me, I didn't want to cut you</p> <p>23 off.</p> <p>24 Would you agree that with the</p> <p>25 New York Academy of Science meeting in 1964,</p>
Page 78	Page 80
<p>1 Castleman, ScD</p> <p>2 Association.</p> <p>3 <b>A. Right.</b></p> <p>4 Q. One of the files that I recently</p> <p>5 obtained from Mr. Donnay following our last</p> <p>6 deposition, which I believe was in January --</p> <p>7 no, whenever it was, this year, 2010, I got a</p> <p>8 copy of news articles.</p> <p>9 Can you tell me what benefit news</p> <p>10 articles are with regard to your view of</p> <p>11 historical knowledge concerning asbestos, what</p> <p>12 part to do they play, what role do they play?</p> <p>13 <b>A. Well, the news articles reflect a</b></p> <p>14 <b>dissemination to a broader circle of society</b></p> <p>15 <b>than medical articles. And so the news articles</b></p> <p>16 <b>in many ways form a kind of notice to whoever</b></p> <p>17 <b>reads them.</b></p> <p>18 <b>And some of the parties I've been</b></p> <p>19 <b>most interested in have been people like the</b></p> <p>20 <b>Abex executive, who was regularly reading the</b></p> <p>21 <b>New York Times and sending copies of the</b></p> <p>22 <b>articles around to his colleagues in the</b></p> <p>23 <b>company.</b></p> <p>24 <b>It's -- perhaps -- I see it in a</b></p> <p>25 <b>fairly limited way. I don't -- I don't see</b></p>	<p>1 Castleman, ScD</p> <p>2 that following that time frame, there was a very</p> <p>3 large news media dissemination of various</p> <p>4 comments and portions of the studies that were</p> <p>5 reprinted in newspapers around the country?</p> <p>6 <b>A. I wouldn't call it very large.</b></p> <p>7 <b>There were starting to be articles that came out</b></p> <p>8 <b>in newspapers, and I have tried to collect these</b></p> <p>9 <b>articles. And there aren't that many of them,</b></p> <p>10 <b>especially in the 1960s, talking about Selikoff</b></p> <p>11 <b>and his work. I mean, one does see reports in</b></p> <p>12 <b>the Washington Post and in some other major</b></p> <p>13 <b>papers, and then some other not so major papers,</b></p> <p>14 <b>as well. But...</b></p> <p>15 Q. Is this an effort by the news</p> <p>16 media, in your view, to disseminate knowledge</p> <p>17 about asbestos disease?</p> <p>18 <b>A. Well, they just see themselves as</b></p> <p>19 <b>being in the business of reporting the news.</b></p> <p>20 <b>And so if something comes to their attention and</b></p> <p>21 <b>they consider it newsworthy, and they are</b></p> <p>22 <b>professional journalists in the way that we</b></p> <p>23 <b>expect most newspapers were, then they might</b></p> <p>24 <b>choose to write an article about it.</b></p> <p>25 Q. In addition to newspaper articles</p>



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<p>1 Castleman, ScD</p> <p>2 or news articles, articles also appeared in</p> <p>3 other forms of journals as opposed to just in</p> <p>4 medical journals.</p> <p>5 Do you agree with that?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. For example, I believe in -- was it</p> <p>8 1950, May of 1950, when Dr. Hueper was noted</p> <p>9 in -- was it Time Magazine or Newsweek?</p> <p>10 <b>A. Newsweek.</b></p> <p>11 Q. Newsweek Magazine?</p> <p>12 <b>A. Right.</b></p> <p>13 Q. And that certainly was not a</p> <p>14 medical journal, but it was in the section of</p> <p>15 Newsweek about medicine?</p> <p>16 <b>A. Right.</b></p> <p>17 Q. Is that the kind of information</p> <p>18 that was intended, in your view, to reach the</p> <p>19 general population?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Or at least those who were reading</p> <p>22 Newsweek?</p> <p>23 <b>A. That particular page of Newsweek</b></p> <p>24 <b>where in one paragraph asbestos was named, yes.</b></p> <p>25 Q. Likewise, you also have files that</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>files clearly in mind, but I do recall seeing</b></p> <p>3 <b>some documentation connected with the filing of</b></p> <p>4 <b>some of these cases in Illinois in the early</b></p> <p>5 <b>'30s.</b></p> <p>6 Q. Some number of cases were direct</p> <p>7 action cases by employees at Waukegan against</p> <p>8 Johns Manville?</p> <p>9 <b>A. I think they were employer suits,</b></p> <p>10 <b>if that's what you mean by "direct action."</b></p> <p>11 Q. Yes.</p> <p>12 And as a result of the disposition</p> <p>13 of those cases, that was one of the things that</p> <p>14 sparked or provided to be the impetus to the</p> <p>15 1936 act, Occupational Disease Act?</p> <p>16 MR. WALKER: Are you asking</p> <p>17 him, was the result of the cases the</p> <p>18 spark or the fact that those cases</p> <p>19 were filed? I mean, there's a real</p> <p>20 difference.</p> <p>21 MR. MODESITT: My question</p> <p>22 was what it was, Jim, the result of</p> <p>23 the case.</p> <p>24 <b>A. That's the way I heard it.</b></p> <p>25 <b>I think that those cases and</b></p>
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<p>1 Castleman, ScD</p> <p>2 you referred to as early litigation files, do</p> <p>3 you recall that?</p> <p>4 <b>A. No. Maybe you can tell me a little</b></p> <p>5 <b>bit more about what it is you're asking about.</b></p> <p>6 Q. The files that Mr. Donnay will</p> <p>7 provide at a cost about early asbestos-related</p> <p>8 litigation files?</p> <p>9 <b>A. Right. There is a file of -- I</b></p> <p>10 <b>mean, these files are all my files you're</b></p> <p>11 <b>talking about. What Mr. Donnay is providing are</b></p> <p>12 <b>my files. He scans the documents, he updates</b></p> <p>13 <b>the files as new documents come to my attention.</b></p> <p>14 <b>So there is, I think, a collection</b></p> <p>15 <b>of early -- well, early -- I write about these</b></p> <p>16 <b>things and I have sort of gathered some of the</b></p> <p>17 <b>records I write about in terms of early product</b></p> <p>18 <b>liability cases and early workers' compensation</b></p> <p>19 <b>claims.</b></p> <p>20 Q. For example, you have collected a</p> <p>21 group of approximately -- I think there's</p> <p>22 approximately 30 cases that were filed out of</p> <p>23 the Waukegan, Illinois plant in the 1930s</p> <p>24 against Johns Manville?</p> <p>25 <b>A. Well, again, I don't have these</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>probably other cases where suits had been</b></p> <p>3 <b>brought against employers and which suits were</b></p> <p>4 <b>thrown out contributed to the condition leading</b></p> <p>5 <b>to the changes in Illinois law.</b></p> <p>6 <b>But, again, it's just -- this isn't</b></p> <p>7 <b>something that I have done a meticulous study</b></p> <p>8 <b>of; I mean, reading all the newspaper stories</b></p> <p>9 <b>that were published in the 1930s or doing the</b></p> <p>10 <b>other kinds of things one might do in order to</b></p> <p>11 <b>investigate that.</b></p> <p>12 Q. Do you recall what specific</p> <p>13 asbestos product was made at Waukegan's plant of</p> <p>14 Johns Manville?</p> <p>15 <b>A. Back in the 1930s, probably they</b></p> <p>16 <b>made textiles, and they may have made asbestos</b></p> <p>17 <b>cement products, but I don't know for sure.</b></p> <p>18 Q. Do you know what kind of asbestos</p> <p>19 fiber was used at the Waukegan plant?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Do you agree, though, that there</p> <p>22 were people at the Waukegan plant who sought</p> <p>23 relief by filing suit against Johns Manville,</p> <p>24 and they sought compensation because they had</p> <p>25 developed asbestos disease?</p>

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<p>1 Castleman, ScD</p> <p>2 <b>A. I understand that that's the basic</b></p> <p>3 <b>allegations that were involved in these lawsuits</b></p> <p>4 <b>we've been talking about.</b></p> <p>5 Q. If you have a lawsuit -- if you</p> <p>6 work at Waukegan and you have a lawsuit claiming</p> <p>7 that you have an asbestos disease, would you</p> <p>8 presume that the individual who filed the</p> <p>9 lawsuit would therefore know that asbestos could</p> <p>10 cause a disease?</p> <p>11 <b>A. Yes. I mean, the person is clearly</b></p> <p>12 <b>saying that their lung problem, however it was</b></p> <p>13 <b>characterized, was at least partly</b></p> <p>14 <b>occupationally caused.</b></p> <p>15 Q. By the asbestos?</p> <p>16 <b>A. Well, by the dust that they were</b></p> <p>17 <b>exposed to. Again, some of these legal papers</b></p> <p>18 <b>are kind of vague about describing the lung</b></p> <p>19 <b>condition.</b></p> <p>20 Q. What about the -- were there also</p> <p>21 cases filed out of the New Jersey plant at</p> <p>22 Manville against Johns Manville?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Again, by employees who worked at</p> <p>25 the Johns Manville plant in Manville,</p>	<p>1 Castleman, ScD</p> <p>2 <b>A. Yes. I mean, it's not terribly</b></p> <p>3 <b>clear, but it's a characterization that's</b></p> <p>4 <b>basically fair, that they were trying to --</b></p> <p>5 <b>they had -- their editing comments to the</b></p> <p>6 <b>authors of the medical report were clearly</b></p> <p>7 <b>conditioned by the eminent consideration of</b></p> <p>8 <b>workers' compensation law changes by the</b></p> <p>9 <b>New Jersey legislature, at least that's the way</b></p> <p>10 <b>it was described in the letters.</b></p> <p>11 Q. Can we assume that when the letters</p> <p>12 were written in 1934, New Jersey did not have,</p> <p>13 at that time, an occupational disease or a</p> <p>14 workers' compensation law that would cover</p> <p>15 asbestosis? Is that your understanding?</p> <p>16 <b>A. Well, it appears that civil suits</b></p> <p>17 <b>were still a possibility. They didn't have a</b></p> <p>18 <b>workers' compensation law that covered</b></p> <p>19 <b>asbestosis apparently, but they had -- that the</b></p> <p>20 <b>companies were open to civil suits and had, in</b></p> <p>21 <b>fact, paid some money to settle such suits in</b></p> <p>22 <b>1933 in New Jersey.</b></p> <p>23 Q. So in New Jersey, direct actions by</p> <p>24 employees were permitted against the employer</p> <p>25 for work-related dust disease; do you agree with</p>
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<p>1 Castleman, ScD</p> <p>2 New Jersey?</p> <p>3 <b>A. Right.</b></p> <p>4 Q. And those cases, likewise, were</p> <p>5 from employees who claimed to have</p> <p>6 asbestos-induced disease.</p> <p>7 Do you agree with that?</p> <p>8 <b>A. They claimed to have diseases</b></p> <p>9 <b>induced by the dust that they breathed at the</b></p> <p>10 <b>factory. Just how the dust was described, I</b></p> <p>11 <b>don't recall exactly or how the disease was</b></p> <p>12 <b>described, either.</b></p> <p>13 Q. You have on other occasions</p> <p>14 discussed the New Jersey -- strike that. Let me</p> <p>15 rephrase that.</p> <p>16 You have on other occasions taken</p> <p>17 issue with various letters in December of 1934</p> <p>18 between Mr. Hobart and Mr. Brown as it relates</p> <p>19 to the Lanza study; do you recall that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And one of the issues, as I</p> <p>22 understand it from your vantage point, is how it</p> <p>23 may or may not affect the Workers' Compensation</p> <p>24 law which had not yet been passed in New Jersey.</p> <p>25 Is that a fair characterization?</p>	<p>1 Castleman, ScD</p> <p>2 that?</p> <p>3 <b>A. Well, I don't know how clear the</b></p> <p>4 <b>law was on all this. I think that the cases I</b></p> <p>5 <b>know about were resolved by settlement, and that</b></p> <p>6 <b>the company was sufficiently concerned about its</b></p> <p>7 <b>exposure to pay off the lawyer who brought the</b></p> <p>8 <b>cases so that he wouldn't bother them with any</b></p> <p>9 <b>more such cases. That was one of the conditions</b></p> <p>10 <b>of the settlement of 11 cases in 1933, according</b></p> <p>11 <b>to the board of directors' minutes at Johns</b></p> <p>12 <b>Manville.</b></p> <p>13 <b>But just what the law was, I don't</b></p> <p>14 <b>know if that was ever resolved formally by the</b></p> <p>15 <b>courts. It may have just been nipped in the bud</b></p> <p>16 <b>by a settlement by JM.</b></p> <p>17 Q. Do you know whether or not a</p> <p>18 workers' compensation law or an occupational</p> <p>19 disease law that was designed to cover asbestos</p> <p>20 dust was even proposed in the legislature in</p> <p>21 New Jersey in either 1934, 1935, 1936, 1937 or</p> <p>22 1938?</p> <p>23 <b>A. No, I don't know what the fate of</b></p> <p>24 <b>the legislation described in the Johns Manville</b></p> <p>25 <b>letters was. I haven't actually looked into</b></p>

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**Castleman, ScD**  
**what actually took place in the legislature or**  
**who did what when.**

Q. Is it fair for me to assume that you have made no inquiry to the legislative committees in New Jersey to determine whether any proposal was even submitted in those years?

**A. That's right.**

Q. Do you know what year New Jersey did, in fact, adopt an occupational disease law, workers' compensation law, that would cover the disease asbestosis?

**A. I believe that was 1945.**

Q. And do you have any information to suggest that prior to that time any proposal had even been offered to the legislature?

**A. I don't know anything about the legislative history of the law between 1935 and 1945.**

Q. I believe you are also familiar with what I will refer to as third-party actions, individuals who were applying insulation products that brought third-party actions against various manufacturers, many of them in California in the mid-1950s; are you

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**Castleman, ScD**  
 familiar with -- you're familiar with those? For example, the James Whitcomb Riley claim is one that comes to mind.

**A. Those were workers' comp claims.**

Q. Was Riley a comp claim?

**A. Yes.**

Q. And that was in California?

**A. Right. All of those claims in the**  
**--**

Q. Okay. I'm sorry.

**A. -- 1950s in that category were the same kind of claim.**

Q. Yes. My apologies, Doctor. My recollection was faulty for a moment.

There was a group of -- I don't know, a reasonable group of workers' comp claims filed by employees of contractor units; is that correct?

**A. They were employees of contracting companies --**

Q. Right.

**A. -- or hired by contracting companies and had some kind of employee relationship with these companies. And many of**

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**Castleman, ScD**  
**these guys worked for 20 or 30 different**  
**companies because the contract periods**  
**apparently were for specific jobs, not kind of a**  
**lifetime job.**

Q. So did many of these cases take place in the 1954, '55, '56 time frame?

**A. One starts to see, or I started to see such cases being filed -- I think the earliest was 1952, and they started out at -- well, it became more numerous after 1960.**

Q. Is it true that in the mid-1950s many of the actual claims, as they were submitted, claimed asbestos dust disease to the lungs?

**A. Yes.**

Q. And would it, therefore, be fair to say that those individuals who were applying those products were, in fact, aware that under some circumstances, asbestos could be hazardous to them and cause lung disease?

**A. Well, I think that's a fair conclusion about the individuals who actually filed the claims, and there are a limited number of them. And I have them in Table 3 of**

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**Castleman, ScD**  
**Chapter 3 of my book.**

Q. Yes, there's a long table in there. And those were the same cases that you, I believe, refer to as early litigation files under Mr. Donnay's list.

At any rate, over the years you've testified about various manufacturing companies, including Johns Manville and the knowledge that they had about asbestos; is that correct?

**A. Yes.**

Q. And you essentially indicated in your testimony that you believe they've known about disease to asbestos going back decades, as far back as the 1930s or '40s; is that fair?

**A. Johns Manville?**

Q. Yes.

**A. Yes.**

Q. You have also done work -- strike that.

At some point in time, the year of which I'm not sure I know, either Johns Manville or the trustees in its reorganization sued the United States Government and/or the US Navy?

**A. Right.**

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<p>1 <b>Castleman, ScD</b></p> <p>2 Q. And you were hired to -- strike</p> <p>3 that.</p> <p>4 You were hired to provide testimony</p> <p>5 and review documents of the US Navy; is that</p> <p>6 fair?</p> <p>7 <b>A. I was hired to review documents</b></p> <p>8 <b>relating to a lot more than the US Navy, but</b></p> <p>9 <b>there was some Navy documents included and this</b></p> <p>10 <b>was -- I was hired by the Justice Department.</b></p> <p>11 Q. As a result of that review, you</p> <p>12 provided testimony concerning your findings in</p> <p>13 that litigation?</p> <p>14 <b>A. I did.</b></p> <p>15 <b>(Whereupon at 2:04 p.m.,</b></p> <p>16 <b>Mr. Walker leaves the deposition</b></p> <p>17 <b>room.)</b></p> <p>18 MR. MODESITT: We'll wait</p> <p>19 until Jim gets back.</p> <p>20 THE WITNESS: Well, if he's</p> <p>21 not worried, you can go on. If I</p> <p>22 think you asked something</p> <p>23 sufficiently outrageous, I will</p> <p>24 bring him back.</p> <p>25 MR. MODESITT: Okay.</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>interesting arguments. They were arguing things</b></p> <p>3 <b>like they didn't know because there was an</b></p> <p>4 <b>espionage act; they didn't know how the Navy was</b></p> <p>5 <b>using all the asbestos insulation they sold in</b></p> <p>6 <b>those shipyards all those years because they</b></p> <p>7 <b>couldn't get in, until the Government came up</b></p> <p>8 <b>with some guy who worked as a watchman and</b></p> <p>9 <b>recalled a Johns Manville guy coming around all</b></p> <p>10 <b>the time and got waved in and flashed his</b></p> <p>11 <b>business card.</b></p> <p>12 <b>So there are all kinds of things</b></p> <p>13 <b>that may be lost to memory or may be</b></p> <p>14 <b>misremembered in litigation. There were lots of</b></p> <p>15 <b>things Johns Manville said in that case.</b></p> <p>16 Q. And I'm sure there's lots of things</p> <p>17 that the US Navy said, also. There's at least a</p> <p>18 lot of documents from the US Navy about</p> <p>19 knowledge of asbestos; do you agree with that?</p> <p>20 <b>A. Yes. In the course of preparing</b></p> <p>21 <b>its case, Johns Manville came up with whatever</b></p> <p>22 <b>documents it could find to show that the US Navy</b></p> <p>23 <b>had some awareness about hazards of asbestos</b></p> <p>24 <b>during the period of World War II.</b></p> <p>25 Q. Would it be a fair statement,</p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 BY MR. MODESITT:</p> <p>3 Q. You have previously testified in</p> <p>4 response to other counsel in the last -- at</p> <p>5 least in the last year about comparing knowledge</p> <p>6 of the US Navy to Johns Manville.</p> <p>7 Do you recall some of those</p> <p>8 instances?</p> <p>9 <b>A. Well, that was sort of my role in</b></p> <p>10 <b>this Court of Claims case. There was the</b></p> <p>11 <b>question of some kind of a comparison between</b></p> <p>12 <b>the knowledge of the US Government and not just</b></p> <p>13 <b>the Navy, but the United States Government</b></p> <p>14 <b>generally, which was mainly the Navy and Johns</b></p> <p>15 <b>Manville. And that was part of the way the case</b></p> <p>16 <b>was framed.</b></p> <p>17 <b>(Whereupon at 2:05 p.m.,</b></p> <p>18 <b>Mr. Walker re-enters the deposition</b></p> <p>19 <b>room.)</b></p> <p>20 Q. In other words, is my understanding</p> <p>21 correct that Johns Manville was arguing in the</p> <p>22 case that the US Navy had paramount knowledge to</p> <p>23 Johns Manville on disease or had more knowledge,</p> <p>24 maybe that's a better word?</p> <p>25 <b>A. Well, they were making all kinds of</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 Dr. Castleman, that after your review of the</p> <p>3 information that the US Navy did in fact have --</p> <p>4 that the Navy's information about the hazards of</p> <p>5 asbestos, while it may not have been more than</p> <p>6 Johns Manville, was at least equal to Johns</p> <p>7 Manville?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Have you recently testified to the</p> <p>10 contrary to that statement?</p> <p>11 <b>A. I don't know exactly what my</b></p> <p>12 <b>testimony has been on that particular point, but</b></p> <p>13 <b>Johns Manville had knowledge about cancer</b></p> <p>14 <b>studies, which were being withheld from</b></p> <p>15 <b>publication during World War II, which the</b></p> <p>16 <b>US Navy didn't have knowledge of.</b></p> <p>17 Q. How about with regard to the</p> <p>18 disease asbestosis from asbestos exposure?</p> <p>19 <b>A. No. This is particularly -- I'm</b></p> <p>20 <b>talking about cancer from asbestos exposure.</b></p> <p>21 <b>But the Navy was certainly aware of</b></p> <p>22 <b>the fact that there was a hazard of asbestos</b></p> <p>23 <b>that existed in shipyard work; that they were</b></p> <p>24 <b>aware of that during World War II, they</b></p> <p>25 <b>published on it. For the most part, the Navy</b></p>



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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>appears to have published basically what it knew</b></p> <p>3 <b>about the potential hazard of asbestos. Even</b></p> <p>4 <b>before they had identified cases of asbestos</b></p> <p>5 <b>disease in shipyards, the Navy was warning about</b></p> <p>6 <b>the danger.</b></p> <p>7 Q. Did you find -- I think you've seen</p> <p>8 the Fleischer-Drinker report?</p> <p>9 A. I've spent months of my life</p> <p>10 looking at the Fleischer-Drinker report.</p> <p>11 Q. You've also seen the preliminary</p> <p>12 draft of that, have you not?</p> <p>13 A. I've seen various versions of it,</p> <p>14 which might be characterized certainly as</p> <p>15 prepublication drafts.</p> <p>16 Q. And did it seem odd to you in any</p> <p>17 way that they deleted one whole shipyard out of</p> <p>18 the published version from the prepublication</p> <p>19 drafts?</p> <p>20 A. If you're talking about the Bath</p> <p>21 Iron Works and the cases of asbestosis seen at</p> <p>22 the Bath Iron Works, I thought that was</p> <p>23 something that I would find as a critical</p> <p>24 omission.</p> <p>25 Q. And if industry had done that, you</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 cases from Bath Iron Works out of the final</p> <p>3 Fleischer-Drinker report, that that instant was</p> <p>4 an effort to conceal that asbestos disease was</p> <p>5 going on in the Government contract and/or on</p> <p>6 shipyards?</p> <p>7 A. I don't know. I mean, the</p> <p>8 Fleischer report did report cases of asbestosis</p> <p>9 described in the report as moderate and</p> <p>10 advanced. So they weren't totally trying to</p> <p>11 conceal the fact that there were cases of</p> <p>12 asbestosis occurring in shipyards.</p> <p>13 I don't recall if it were Navy</p> <p>14 yards or private yards, there were two of each</p> <p>15 in the Fleischer study, but they -- it's not</p> <p>16 very clear to me. You know, that's why I'm not</p> <p>17 sure.</p> <p>18 I mean, it might have been -- I</p> <p>19 mean, Fleischer was -- I'm sorry, Drinker was</p> <p>20 very close to American industry. He had become</p> <p>21 a consultant for the American Petroleum</p> <p>22 Institute in the 15 or so years following World</p> <p>23 War II. He had been an industry man before he</p> <p>24 went to Harvard. There may have been some</p> <p>25 sensitivity on his part about writing a report,</p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 would have found it certainly critical of the</p> <p>3 industry, wouldn't you?</p> <p>4 A. Yes. Sometimes it's hard to</p> <p>5 distinguish between incompetence and mendacity,</p> <p>6 looking at these documents years later.</p> <p>7 Q. So do you think the US Navy was</p> <p>8 incompetent or just full of mendacity?</p> <p>9 A. It's hard to say. I mean, they had</p> <p>10 seen six cases of asbestosis in one shipyard; in</p> <p>11 the Bath Iron Works, four or six cases. They</p> <p>12 could have published, at least noted that in the</p> <p>13 Fleischer article, but they chose to only make a</p> <p>14 very oblique reference to the fact that they had</p> <p>15 seen something at the Bath Iron Works. I don't</p> <p>16 recall how they characterized it, exactly.</p> <p>17 Q. Do you think that was an effort to</p> <p>18 conceal that there was, in fact, some asbestos</p> <p>19 disease at one of the Navy shipyards?</p> <p>20 MR. WALKER: To what are you</p> <p>21 referring by the pronoun "that"?</p> <p>22 MR. MODESITT: I'll rephrase</p> <p>23 it.</p> <p>24 Q. Do you think that by leaving a</p> <p>25 portion of the preliminary draft on the disease</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>which could cause problems for companies in the</b></p> <p>3 <b>United States.</b></p> <p>4 But I don't really know. I mean,</p> <p>5 I'm just -- I look at the -- and I haven't</p> <p>6 looked at the draft, I don't have it in front of</p> <p>7 me right now, so I'm not really perfectly clear</p> <p>8 about what it was that was in the draft that</p> <p>9 didn't make it into the final report. And I</p> <p>10 certainly haven't seen any correspondence,</p> <p>11 internal correspondence ever dug up -- and I</p> <p>12 think Johns Manville looked real hard for</p> <p>13 this -- showing anything improper about the way</p> <p>14 this whole thing was brought to publication.</p> <p>15 Q. If, as the draft had indicated,</p> <p>16 there were cases of asbestosis in another</p> <p>17 shipyard that was omitted from the final draft,</p> <p>18 that's something that you don't think probably</p> <p>19 should have been done?</p> <p>20 A. No. I mean, if there were six</p> <p>21 cases of asbestosis in one shipyard and that was</p> <p>22 the reason that they did this survey, and then</p> <p>23 they do the survey and they find only three</p> <p>24 cases in four shipyards, you would think that</p> <p>25 the six cases in one shipyard that preceded that</p>

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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>would be significant enough to be included in</b></p> <p>3 <b>the preface to the study that they're reporting</b></p> <p>4 <b>on about the four shipyards.</b></p> <p>5 <b>But, again, I can't really say with</b></p> <p>6 <b>any feeling of certainty that there was anything</b></p> <p>7 <b>improper done here. It might have just been</b></p> <p>8 <b>shoddy, it might have just been kind of a let's</b></p> <p>9 <b>not make too much trouble for anybody kind of</b></p> <p>10 <b>mentality that people like Drinker, I suspect,</b></p> <p>11 <b>may have had. Not out of any evil inclination,</b></p> <p>12 <b>just because of the -- you know, the -- he was a</b></p> <p>13 <b>man of his time. I mean, there was no</b></p> <p>14 <b>government regulation. We were decades away</b></p> <p>15 <b>from having anything like OSHA or the</b></p> <p>16 <b>Environmental Protection Agency in this country,</b></p> <p>17 <b>and industry was pretty much in the driver's</b></p> <p>18 <b>seat when it came to the conditions of work as</b></p> <p>19 <b>far as health and safety in this country.</b></p> <p>20 <b>Q. So you would give more deference to</b></p> <p>21 <b>Fleischer and Drinker than you would with</b></p> <p>22 <b>someone with a company at that point in time?</b></p> <p>23 <b>A. I don't think you can make that</b></p> <p>24 <b>comparison. I mean, the specifics of the</b></p> <p>25 <b>Fleischer article are -- you know, it's not</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>Q. Did you see the correspondence</b></p> <p>3 <b>regarding the initial draft that showed they</b></p> <p>4 <b>were in compliance with the Navy requirement of</b></p> <p>5 <b>prepublication review?</b></p> <p>6 <b>A. No. But I mean, I may have seen</b></p> <p>7 <b>these documents, I just don't have a perfect</b></p> <p>8 <b>recollection of them. I haven't seen a lot of</b></p> <p>9 <b>this stuff for years. I mean, this may be all</b></p> <p>10 <b>covered. If it's covered in the documents,</b></p> <p>11 <b>there's very little point in testing my memory</b></p> <p>12 <b>over what they say.</b></p> <p>13 <b>Q. Would you agree, Doctor, that over</b></p> <p>14 <b>the many decades, concepts of what is generally</b></p> <p>15 <b>accepted in the publication business has</b></p> <p>16 <b>changed?</b></p> <p>17 <b>A. Yes.</b></p> <p>18 <b>Q. In other words, what we think about</b></p> <p>19 <b>today -- and I always liken it post-Watergate</b></p> <p>20 <b>and pre-Watergate, American public today expects</b></p> <p>21 <b>more information than it used to, and it's used</b></p> <p>22 <b>to getting more information than it used to; do</b></p> <p>23 <b>you agree with that?</b></p> <p>24 <b>A. I suppose that's true. I think</b></p> <p>25 <b>American public has become a lot less naive</b></p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>clear. I mean, if I thought there was something</b></p> <p>3 <b>clearly rotten about what they did, I wouldn't</b></p> <p>4 <b>have any qualms about saying so. But it's not</b></p> <p>5 <b>that clear to me whether there was anything, you</b></p> <p>6 <b>know, that I would describe as clearly unethical</b></p> <p>7 <b>or improper that went on.</b></p> <p>8 <b>It might have just been the way</b></p> <p>9 <b>people like Drinker wrote things like that up,</b></p> <p>10 <b>that doesn't reflect any kind of pressure that</b></p> <p>11 <b>was brought by any vested interest or even by</b></p> <p>12 <b>Navy or other government bureaucrats. It might</b></p> <p>13 <b>have just been the way some people write some</b></p> <p>14 <b>things up.</b></p> <p>15 <b>Q. Do you agree that the draft had to</b></p> <p>16 <b>be submitted to the Bureau of -- one of the</b></p> <p>17 <b>US Navy departments before it could be</b></p> <p>18 <b>published?</b></p> <p>19 <b>A. I don't know what the ritual was</b></p> <p>20 <b>for that. I know the Navy published it with --</b></p> <p>21 <b>or it was published by Drinker with a disclaimer</b></p> <p>22 <b>from the Navy. So I don't really know what, if</b></p> <p>23 <b>any, obligation Fleischer and his coworkers had</b></p> <p>24 <b>to even show their work to the Navy as an</b></p> <p>25 <b>institution before publishing it.</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>about some things, and that's one reason why</b></p> <p>3 <b>they want more information.</b></p> <p>4 <b>Q. And as civilization has advanced</b></p> <p>5 <b>with technological advancements, it's made</b></p> <p>6 <b>information more retrievable by American public?</b></p> <p>7 <b>A. Sure.</b></p> <p>8 <b>Q. Do you recall Dr. Borow going to</b></p> <p>9 <b>the plant at Manville, New Jersey to do a study?</b></p> <p>10 <b>A. I recall Borow publishing about --</b></p> <p>11 <b>I don't know if he ever went to the plant, but I</b></p> <p>12 <b>recall him publishing about people dying from</b></p> <p>13 <b>mesothelioma that worked at the Manville plant.</b></p> <p>14 <b>Q. And do you recall what year he</b></p> <p>15 <b>published?</b></p> <p>16 <b>A. 1973 was at least one. There might</b></p> <p>17 <b>have been one in 1967.</b></p> <p>18 <b>Q. And the '73 was a follow-up of the</b></p> <p>19 <b>earlier one, was it not?</b></p> <p>20 <b>A. I suppose.</b></p> <p>21 <b>Q. And in 1967, do you recall that</b></p> <p>22 <b>Dr. Borow had received the funds for doing the</b></p> <p>23 <b>study from the union who represented the workers</b></p> <p>24 <b>at Manville?</b></p> <p>25 <b>A. I don't recall that.</b></p>

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**Castleman, ScD**

Q. Would you agree with me, Doctor, that -- strike that.

Do you recall seeing various news publications or other publications where there actually were a goodly number of mesotheliomas as a result of employment at the Manville, New Jersey plant?

**A. Well, I remember one publication of Borow's, I don't recall which one it was. I think there was 17 cases reported, including two environmental cases. If you call that a goodly number, then that's what it was. I don't recall, there may have been larger numbers in the subsequent, for the 1973 report, I just don't remember what they were.**

Q. When I used the word "goodly," it's certainly above what one would expect in a background level.

**A. Sure.**

Q. And was the conclusion that those were occupationally induced?

**A. Except for the two neighborhood cases, I believe that's right.**

Q. Would it be a fair assumption,

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**Castleman, ScD**

Dr. Castleman, that the employees at the Manville plant, when they were being studied, would have known that asbestos would cause mesothelioma?

**A. No.**

Q. And why is that?

**A. Because Johns Manville wasn't telling the workers about this. In 1972, one of their plant managers in California characterized it as a hush-hush policy, to not tell workers about the findings of their medical exams.**

**There are other documents on site in my book about Johns Manville withholding that information from its employees.**

Q. Do you think Dr. Borow withheld it from the employees who were paying him to do the study?

**A. I don't know if Dr. Borow ever had any contact with any employees. I don't recall him being supported by the union. The people he's reporting on are people that either were dying or had died from mesothelioma. Whether any of these people were alive when they came to the attention -- when they first came to the**

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**Castleman, ScD**

**attention of Dr. Borow, I don't know.**

Q. If it turns out that Dr. Borow was actually being supported financially to do this study by the very union of the employees of Manville, would that suggest to you that at least the union who represented the employees there were aware of the difficulty with asbestos and mesothelioma?

**A. Yes.**

Q. Have you reviewed any specific information regarding Janet Shipley?

**A. No. My testimony is not case specific.**

Q. I know it generally isn't, I just need to ask you this.

So other than you know that --

MR. WALKER: She was not in Dr. Borow's study, Mr. Modesitt.

MR. MODESITT: I'm sure she wasn't.

Q. Do you know anything about the Eureka plant in Bloomington, Illinois?

**A. I understand that there may have been some exposure in the plant, but I don't**

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**Castleman, ScD**

**know anything about it. I mean, I just heard about this plant, I think, for the first time this morning in a very brief discussion with Mr. Walker.**

Q. Do you know anything about the use of asbestos in the construction and manufacture of thermal batteries?

**A. No.**

Q. Do you know anything about the use of asbestos in the construction of fuse lines?

**A. No.**

Q. Or fuses for grenades or such things?

**A. No, I sure don't.**

Q. In your historical research, looking at the literature in the 1930s, in both the United States and in Europe, for example, would you agree, Doctor, that in the United States in the 1930s there was a very vast predominance of chrysotile fiber used in making asbestos products?

**A. I suppose so. I mean, the importation of amphibole asbestos from South Africa only began in the 1930s, or at least only**

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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>began to be anything more than trivial</b></p> <p>3 <b>quantities, I think, in the 1930s.</b></p> <p>4 <b>And chrysotile accounted for</b></p> <p>5 <b>95 percent of all the asbestos used in the</b></p> <p>6 <b>United States in the 20th century -- all the</b></p> <p>7 <b>asbestos used in the world in the 20th century,</b></p> <p>8 <b>and I think that was true in the United States,</b></p> <p>9 <b>as well.</b></p> <p>10 Q. And in the United States, have you</p> <p>11 seen any of the importation data from either the</p> <p>12 US Department of Commerce or from the Bureau of</p> <p>13 Mines on the actual numbers of the imported</p> <p>14 amphiboles in the US prior to 1935?</p> <p>15 <b>A. I think the Bureau of Mines used to</b></p> <p>16 <b>publish data, but no, not that far back. I</b></p> <p>17 <b>don't think I've seen any data going back before</b></p> <p>18 <b>1935. I think Selikoff was even unable to find</b></p> <p>19 <b>that.</b></p> <p>20 Q. Actually, in Appendix III to the</p> <p>21 1965 annals, there's a schedule in there for</p> <p>22 1920 -- I think it's 1929 to 1935 on amphiboles</p> <p>23 in the United States.</p> <p>24 <b>A. Oh, there you go. I didn't know</b></p> <p>25 <b>that.</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>A. I don't know if that's true or not.</b></p> <p>3 Q. Are you familiar with the ownership</p> <p>4 of the crocidolite and amosite mines in South</p> <p>5 Africa in the '30s?</p> <p>6 <b>A. Yes. Well, at least somewhat.</b></p> <p>7 Q. And are they predominantly owned by</p> <p>8 British interest? Were they?</p> <p>9 <b>A. I think that the British companies</b></p> <p>10 <b>were prominent in the ownership of the asbestos</b></p> <p>11 <b>mines in South Africa in the 1920s and '30s in</b></p> <p>12 <b>the US, I think so.</b></p> <p>13 Q. And would you agree that even when</p> <p>14 they discussed various asbestos fiber usage at</p> <p>15 the 1964 conference, they referred to the use of</p> <p>16 crocidolite on many products that in the</p> <p>17 United States would have been made with</p> <p>18 chrysotile?</p> <p>19 <b>A. I don't remember that.</b></p> <p>20 Q. Okay. Fair enough.</p> <p>21 I know you have reviewed many of</p> <p>22 the items of correspondence from</p> <p>23 Raybestos-Manhattan and Johns Manville.</p> <p>24 Would you agree that there was a</p> <p>25 thought process among some of those executives,</p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 Q. Okay. I didn't -- okay.</p> <p>3 Likewise, are you familiar with the</p> <p>4 fact that in Europe, where the United States</p> <p>5 used mostly chrysotile, there was a very large</p> <p>6 proportion of fiber in Europe on amphiboles in</p> <p>7 the '30s?</p> <p>8 MR. WALKER: Either I missed</p> <p>9 that or something could -- would you</p> <p>10 mind asking that again, Ray?</p> <p>11 MR. MODESITT: No. I'll be</p> <p>12 happy to. I'll be happy to.</p> <p>13 MR. WALKER: The part I -- it</p> <p>14 started out in Europe, and then it</p> <p>15 said United States.</p> <p>16 MR. MODESITT: I'm sorry.</p> <p>17 MR. WALKER: I believe you</p> <p>18 were drawing a distinction, but if</p> <p>19 you did, it missed me.</p> <p>20 MR. MODESITT: No problem.</p> <p>21 BY MR. MODESITT:</p> <p>22 Q. In Europe in the 1930s, would you</p> <p>23 agree, Doctor, that a very large portion of the</p> <p>24 asbestos fiber in Europe was crocidolite and</p> <p>25 amosite?</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 in addition to among -- from Dr. Lanza, that</p> <p>3 they believed or wrote that the asbestos problem</p> <p>4 was more severe in England than it was in the</p> <p>5 United States in the 1930s?</p> <p>6 <b>A. I don't know. I mean, they wrote</b></p> <p>7 <b>letters to that effect, but what they believed</b></p> <p>8 <b>may be another story.</b></p> <p>9 <b>I mean, Vandiver Brown, I think</b></p> <p>10 <b>with some pride of authorship, made reference to</b></p> <p>11 <b>Lanza's publication suggesting that the</b></p> <p>12 <b>asbestosis problem in the United States, at</b></p> <p>13 <b>least in his 1935 study, was not as serious</b></p> <p>14 <b>because it didn't happen to include any people</b></p> <p>15 <b>who were very disabled, didn't have third -- or</b></p> <p>16 <b>third-stage asbestosis, didn't have any of those</b></p> <p>17 <b>cases in the 126 workers that were -- according</b></p> <p>18 <b>to Lanza -- selected at random by Metropolitan</b></p> <p>19 <b>Life and Johns Manville and the other companies</b></p> <p>20 <b>for inclusion in that study.</b></p> <p>21 <b>Whether they really believed that</b></p> <p>22 <b>the asbestosis problem was any different in the</b></p> <p>23 <b>United States than England is another story.</b></p> <p>24 <b>But some of the correspondence they suggested</b></p> <p>25 <b>that -- at least that was the company line, that</b></p>



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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>it was a milder problem here. I'm thinking of</b></p> <p>3 <b>the Asbestos magazine letters.</b></p> <p>4 Q. Okay. Do you recall some of the</p> <p>5 writings by Dr. Gloyne in the 1930s, I believe</p> <p>6 1934 was one of them, where he described some of</p> <p>7 the particularly dusty operations that were</p> <p>8 conducted in England including mattress beating?</p> <p>9 Do you recall any of that?</p> <p>10 <b>A. I recall Gloyne publishing a report</b></p> <p>11 <b>of a hundred cases of asbestosis in 1934. I</b></p> <p>12 <b>don't recall what he said about mattress making</b></p> <p>13 <b>in that report.</b></p> <p>14 Q. Do you recall any comments from</p> <p>15 Dr. Merewether about the higher level of dust</p> <p>16 produced by certain processes, such as mattress</p> <p>17 beating, which was a unique process in England?</p> <p>18 <b>A. I don't recall what Merewether said</b></p> <p>19 <b>about mattress beating or mattress making,</b></p> <p>20 <b>either. I think he talked about it in at least</b></p> <p>21 <b>one of his writings, but I don't remember what</b></p> <p>22 <b>he said.</b></p> <p>23 Q. Okay. Had you seen Plaintiff's</p> <p>24 Exhibit No. 824, which is the minutes,</p> <p>25 September 16, 1959 board minutes of Johns</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 testimony of Dr. Philip Enterline.</p> <p>3 Do you know Dr. Enterline?</p> <p>4 <b>A. I know who he was, I don't know if</b></p> <p>5 <b>I met him. Maybe he's still around.</b></p> <p>6 Q. I honestly don't know. I know he</p> <p>7 was at Pittsburgh. I really don't know if he's</p> <p>8 still around or not. He was around in 1986,</p> <p>9 because I was in a grand rounds with him.</p> <p>10 But in any event, one of the</p> <p>11 exhibits, which I have retrieved from a former</p> <p>12 case involving Mr. Walker is a letter between</p> <p>13 you and Dr. Enterline.</p> <p>14 Do you have a recollection of that?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Did you work with or assist,</p> <p>17 consult with in any way Dr. Enterline when he</p> <p>18 was doing some review for the AIA in 1976 --</p> <p>19 '76-'77 time frame?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Whatever he did or didn't do was</p> <p>22 done without your participation; is that a fair</p> <p>23 statement?</p> <p>24 <b>A. Yes.</b></p> <p>25 <b>(Witness and counsel confer.)</b></p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 Manville before Mr. Walker had provided them to</p> <p>3 you?</p> <p>4 <b>A. No. I'm just seeing this for the</b></p> <p>5 <b>first time.</b></p> <p>6 Q. Have you ever seen any other Johns</p> <p>7 Manville board minutes?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. I'm sorry?</p> <p>10 <b>A. I've seen other Johns Manville</b></p> <p>11 <b>board minutes.</b></p> <p>12 Q. And do you remember what years they</p> <p>13 might have been?</p> <p>14 <b>A. 1933, where they paid off that</b></p> <p>15 <b>lawyer in New Jersey not to bring any more</b></p> <p>16 <b>cases.</b></p> <p>17 Q. And where did you see that?</p> <p>18 <b>A. I don't know, it's been around for</b></p> <p>19 <b>30 years.</b></p> <p>20 Q. Was that in the Manville</p> <p>21 depository, to your recollection, or not?</p> <p>22 <b>A. I think I saw it before there was a</b></p> <p>23 <b>Manville depository.</b></p> <p>24 Q. Mr. Walker has also in this case</p> <p>25 indicated an intention to use some limited</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 Q. Do you know what kind of plant the</p> <p>3 products made at the facility? I thought -- I</p> <p>4 think it was in California?</p> <p>5 <b>A. Yes, it looks like an asbestos</b></p> <p>6 <b>cement pipe plant.</b></p> <p>7 Q. Are you familiar with that plant at</p> <p>8 all?</p> <p>9 <b>A. (Perusing document.) Watson, I</b></p> <p>10 <b>don't recall a plant in Watson in anything I've</b></p> <p>11 <b>read about Johns Manville, so I don't know</b></p> <p>12 <b>exactly what plant this is.</b></p> <p>13 MR. WALKER: I'm going to</p> <p>14 give you something here in a minute,</p> <p>15 Mr. Modesitt, but feel free to do</p> <p>16 something else while I look.</p> <p>17 MR. MODESITT: I'm just about</p> <p>18 done.</p> <p>19 MR. WALKER: Okay.</p> <p>20 BY MR. MODESITT:</p> <p>21 Q. Just a couple of more questions,</p> <p>22 Dr. Castleman.</p> <p>23 I know that you -- well, on other</p> <p>24 occasions you have actually kept track of the</p> <p>25 number of cases in which you've testified during</p>

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<p>1 Castleman, ScD</p> <p>2 the year.</p> <p>3 Have you done that in 2010?</p> <p>4 <b>A. Yes. I think I've done 21 trials</b></p> <p>5 <b>this year.</b></p> <p>6 Q. And how many depositions?</p> <p>7 <b>A. Not quite 50, I think, but the year</b></p> <p>8 <b>is young.</b></p> <p>9 Q. And I understand you testified</p> <p>10 yesterday in California?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And that was in the Brady</p> <p>13 (phonetic) case?</p> <p>14 <b>A. Right.</b></p> <p>15 Q. And you're testifying tomorrow up</p> <p>16 here?</p> <p>17 <b>A. I believe so.</b></p> <p>18 Q. And what is the name of that case,</p> <p>19 please?</p> <p>20 <b>A. Hmm. (Perusing document.)</b></p> <p>21 <b>Carroll, two "Rs," two "Ls."</b></p> <p>22 Q. Was your testimony yesterday and is</p> <p>23 your testimony tomorrow on the general area of</p> <p>24 state of the art?</p> <p>25 <b>A. Yes. It's about the stuff I</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>cases in the state of Illinois are a different</b></p> <p>3 <b>type, a different subclass, I guess, of</b></p> <p>4 <b>testimony that I give about the public health</b></p> <p>5 <b>and corporate history of asbestos.</b></p> <p>6 Q. Are the cases in -- are the</p> <p>7 jurisdictions in and around central Illinois</p> <p>8 where the claims have to do with conspiracy, is</p> <p>9 that the only place that you had given that type</p> <p>10 of testimony?</p> <p>11 <b>A. I think so. I think I've been in</b></p> <p>12 <b>other cases over the years where conspiracy was</b></p> <p>13 <b>included as one of the issues, but my impression</b></p> <p>14 <b>is that -- because it wasn't really necessary to</b></p> <p>15 <b>prove conspiracy to recover whatever damages</b></p> <p>16 <b>would have been recoverable anyway, that</b></p> <p>17 <b>plaintiffs generally decided to not bother with</b></p> <p>18 <b>that.</b></p> <p>19 Q. And in the last two or three years,</p> <p>20 have you provided that type of testimony</p> <p>21 anywhere else other than Illinois?</p> <p>22 <b>A. No.</b></p> <p>23 MR. MODESITT: Thank you,</p> <p>24 Doctor. I think that's all the</p> <p>25 questions I have at the moment.</p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>testified about in asbestos litigation.</b></p> <p>3 Q. You recognize that the testimony</p> <p>4 that you provide in Bloomington, Illinois in</p> <p>5 cases where the allegations concern a civil</p> <p>6 conspiracy is a different type of testimony</p> <p>7 generally than the normal state of the art; is</p> <p>8 that -- I'll rephrase.</p> <p>9 MR. WALKER: Hopefully it's</p> <p>10 all truthful, I mean...</p> <p>11 MR. MODESITT: That wasn't</p> <p>12 even part of my question.</p> <p>13 MR. WALKER: No doubt</p> <p>14 diminished by skillful</p> <p>15 cross-examination, but I'm not on</p> <p>16 the committee to agree that it's a</p> <p>17 different type.</p> <p>18 BY MR. MODESITT:</p> <p>19 Q. Generally speaking, Dr. Castleman,</p> <p>20 is the testimony you provide on the conspiracy</p> <p>21 allegations in McLean County, Illinois different</p> <p>22 from the testimony you generally provide to</p> <p>23 juries where the issue is simply on state of the</p> <p>24 art and duty to warn?</p> <p>25 <b>A. I would say that the conspiracy</b></p>	<p>1 Castleman, ScD</p> <p>2 MR. WALKER: Before you</p> <p>3 leave, I do want to call your</p> <p>4 attention to the fact that, either</p> <p>5 prior to in the course of direct, I</p> <p>6 might bring to Dr. Castleman's</p> <p>7 attention Plaintiff's Exhibit</p> <p>8 No. 824-A, which is a copy of</p> <p>9 Manville's 1959 annual report.</p> <p>10 And at the beginning on</p> <p>11 page 9 of that, there's sort of a</p> <p>12 discussion of asbestos-containing</p> <p>13 pipe. And in particular, on</p> <p>14 page 10, there's a reference that</p> <p>15 Watson, California is one of the</p> <p>16 places where pipe is made.</p> <p>17 And then on page -- well,</p> <p>18 somewhere later there's a picture of</p> <p>19 the board of directors with</p> <p>20 Mr. Biggers in the left order.</p> <p>21 MR. MODESITT: Thank you,</p> <p>22 Mr. Walker. I appreciate you doing</p> <p>23 that.</p> <p>24 May I ask, is that the same</p> <p>25 number that you've always used on</p>

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<p>1 Castleman, ScD</p> <p>2 that exhibit? Or do they -- because</p> <p>3 I know I have a whole group that</p> <p>4 you've given me previously.</p> <p>5 MR. WALKER: Yes. The</p> <p>6 Manville annual reports were</p> <p>7 normally in the three-hundreds, but</p> <p>8 I just paired 824 and 824-A together</p> <p>9 because back in my sheet showing</p> <p>10 days, they just looked so good as a</p> <p>11 pair, probably a perversion that I</p> <p>12 wouldn't want to --</p> <p>13 MR. MODESITT: But it's part</p> <p>14 of the file that you have tendered</p> <p>15 on other occasions, right?</p> <p>16 MR. WALKER: Yes, I have</p> <p>17 distributed that 1959 annual report</p> <p>18 on other occasions.</p> <p>19 MR. MODESITT: Just for the</p> <p>20 record, if you intend to use that</p> <p>21 box again, you don't -- I have the</p> <p>22 last one you gave me. You don't</p> <p>23 need to burn another tree, tear</p> <p>24 another tree down.</p> <p>25 That's all I have.</p>	<p>1 Castleman, ScD</p> <p>2 <b>A. 1929 was the first year that they</b></p> <p>3 <b>were sued. Mr. Johns may have died from</b></p> <p>4 <b>asbestosis in 1898, but I've never been able to</b></p> <p>5 <b>establish that. He had some kind of a lung</b></p> <p>6 <b>problem when he died.</b></p> <p>7 Q. When should railroads have known</p> <p>8 the link between asbestos exposure and lung</p> <p>9 cancer?</p> <p>10 <b>A. Oh, I think that the railroad</b></p> <p>11 <b>doctors probably should have known about that by</b></p> <p>12 <b>the end of the 1940s. They were -- railroads</b></p> <p>13 <b>had a very large presence in the field of</b></p> <p>14 <b>industrial medicine. They were clearly aware of</b></p> <p>15 <b>the Industrial Hygiene Foundation's annual</b></p> <p>16 <b>meetings and apparently some of them attended.</b></p> <p>17 Q. You're aware of -- and you talked</p> <p>18 in the past about references to the medical and</p> <p>19 surgical meetings' minutes, and you specifically</p> <p>20 refer in response to the question I just asked</p> <p>21 you to Dr. Ochsner -- O-C-H-S-N-E-R -- in his</p> <p>22 1958 speech, do you recall that speech?</p> <p>23 <b>A. Right. So by 1958, clearly the</b></p> <p>24 <b>railroads, at their annual meeting of company</b></p> <p>25 <b>doctors, are talking about lung cancer as an</b></p>
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<p>1 Castleman, ScD</p> <p>2 EXAMINATION</p> <p>3 BY MR. KURZ:</p> <p>4 Q. Dr. Castleman, a few questions for</p> <p>5 you about the railroad.</p> <p>6 <b>A. Go ahead.</b></p> <p>7 Q. Your book devotes a portion to the</p> <p>8 railroads.</p> <p>9 Have you done any recent research</p> <p>10 or reviewed any new documents in the past, let's</p> <p>11 say, two years regarding the railroad's</p> <p>12 historical knowledge, that type of thing?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Doctor, what is your opinion as to</p> <p>15 when -- and this is United States, when the</p> <p>16 railroads should have known that asbestos</p> <p>17 exposure could cause the disease asbestosis,</p> <p>18 what decade or time frame?</p> <p>19 <b>A. 1930s.</b></p> <p>20 Q. And that's based upon your review</p> <p>21 of what document or documents?</p> <p>22 <b>A. The documents cited in my book.</b></p> <p>23 Q. Johns Manville, when would Johns</p> <p>24 Manville have known about the capacity of</p> <p>25 asbestos to cause asbestosis?</p>	<p>1 Castleman, ScD</p> <p>2 <b>asbestos disease.</b></p> <p>3 <b>I was just wondering if, you know,</b></p> <p>4 <b>the should-have-known goes back before that, but</b></p> <p>5 <b>in terms of actual knowledge you've got 1958 as</b></p> <p>6 <b>a nice clear date.</b></p> <p>7 Q. And then when should railroads have</p> <p>8 known about asbestos and mesothelioma, the link</p> <p>9 between those two?</p> <p>10 <b>A. Well, I just think they should have</b></p> <p>11 <b>been paying attention to what was in the medical</b></p> <p>12 <b>and scientific literature about asbestos and</b></p> <p>13 <b>should have picked up something by the 1960s</b></p> <p>14 <b>about mesothelioma.</b></p> <p>15 Q. When was the first study in the</p> <p>16 literature confirming mesothelioma in railroad</p> <p>17 workers?</p> <p>18 <b>A. I think one of the first cases was</b></p> <p>19 <b>in Wagner's report in 1960; a guy was</b></p> <p>20 <b>maintaining insulation on steam locomotives.</b></p> <p>21 <b>There was also a report called</b></p> <p>22 <b>"Asbestosis in Rhodesia" that was published in</b></p> <p>23 <b>the Rhodesian railroads. It was -- I don't</b></p> <p>24 <b>recall, it was probably cited in the book in the</b></p> <p>25 <b>railroad section. (Perusing book.)</b></p>

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<p>1 <b>Castleman, ScD</b></p> <p>2 Q. Doctor, you're welcome to look, but</p> <p>3 my question was inartful.</p> <p>4 I really meant to ask you</p> <p>5 United States literature, as opposed to the</p> <p>6 South African stuff that you have.</p> <p>7 <b>A. Well... Okay, well, then, I can't</b></p> <p>8 <b>add anything, I think, to what I've already</b></p> <p>9 <b>said.</b></p> <p>10 Q. Would you agree that the first</p> <p>11 United States study would have been Mancuso in</p> <p>12 the '80s?</p> <p>13 <b>A. I think that was the first time</b></p> <p>14 <b>that there were medical reports of mesothelioma</b></p> <p>15 <b>in railroad workers in the United States</b></p> <p>16 <b>published. I don't think there were earlier --</b></p> <p>17 <b>there may have been earlier cases, but if there</b></p> <p>18 <b>were, I can't recall where they would have been</b></p> <p>19 <b>published or when.</b></p> <p>20 Q. All right. Doctor, you talk about</p> <p>21 in your book you're involved in a 1975 study</p> <p>22 regarding brake workers and how they respond to</p> <p>23 warnings; is that right?</p> <p>24 <b>A. Right.</b></p> <p>25 Q. DC, Baltimore area, you went out</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>the survey did not appear to have changed their</b></p> <p>3 <b>work practices. And as I say, I mean, in the</b></p> <p>4 <b>Baltimore study, the notices were sent to</b></p> <p>5 <b>management, the workers may never have been</b></p> <p>6 <b>told.</b></p> <p>7 Q. And in the DC study, was the</p> <p>8 warnings given directly by the company to the</p> <p>9 workers, or was it given by outside people such</p> <p>10 as yourself?</p> <p>11 <b>A. As I understand it, the public</b></p> <p>12 <b>health workers who were taking these brochures</b></p> <p>13 <b>around were approaching the mechanics themselves</b></p> <p>14 <b>at these workplaces.</b></p> <p>15 Q. Did you draw any conclusions that</p> <p>16 it might be more effective in terms of the</p> <p>17 effectiveness of a warning if it comes directly</p> <p>18 from the employer itself, as opposed to an</p> <p>19 outside party?</p> <p>20 <b>A. It didn't occur to me that the</b></p> <p>21 <b>employers would do anything absent outside</b></p> <p>22 <b>pressure.</b></p> <p>23 Q. Doctor, you've been asked about the</p> <p>24 Kaylo advertisement from -- I forget the year --</p> <p>25 1955, wherein its referenced as being nontoxic?</p>
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<p>1 <b>Castleman, ScD</b></p> <p>2 and discussed with some of the workers the</p> <p>3 hazards of asbestos, lung cancer risk, death,</p> <p>4 that type of thing; is that right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. How many workers did you tell?</p> <p>7 <b>A. Well, in Baltimore, we notified the</b></p> <p>8 <b>managements. And in Washington, the public</b></p> <p>9 <b>health officials handed leaflets directly to</b></p> <p>10 <b>mechanics.</b></p> <p>11 Q. And then you waited a few months</p> <p>12 and went back to see how well the workers were,</p> <p>13 I guess, heeding the warnings that were given;</p> <p>14 is that right?</p> <p>15 <b>A. At Selikoff's recommendation, we</b></p> <p>16 <b>sent college students around to do follow-up</b></p> <p>17 <b>surveys and just to get some basic information</b></p> <p>18 <b>that we could publish about the response to our</b></p> <p>19 <b>notification effort.</b></p> <p>20 Q. And is it fair to say that</p> <p>21 unfortunately a substantial number of those</p> <p>22 workers were not heeding the warnings that had</p> <p>23 been given?</p> <p>24 <b>A. Well, in both studies we found that</b></p> <p>25 <b>some people took our advice, but the majority in</b></p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>A. '56.</b></p> <p>3 Q. '56. Excuse me.</p> <p>4 Would you agree that a customer or</p> <p>5 a user of Kaylo could have read that ad and</p> <p>6 concluded that the product was safe to use?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And would that apply to someone</p> <p>9 such as a railroad that may have utilized that</p> <p>10 product, at least based upon that advertisement</p> <p>11 alone?</p> <p>12 <b>A. Right. If they read that</b></p> <p>13 <b>advertisement, didn't know anything else about</b></p> <p>14 <b>asbestos being hazardous, that would have been a</b></p> <p>15 <b>reasonable conclusion.</b></p> <p>16 Q. In this matter, Mr. Walker has</p> <p>17 indicated a desire to utilize the testimony of a</p> <p>18 gentleman named Robert Winstead.</p> <p>19 Have you ever read or reviewed</p> <p>20 Mr. Winstead's testimony in the past?</p> <p>21 <b>A. No, I don't think I have.</b></p> <p>22 Q. That name is not familiar to you?</p> <p>23 <b>A. No.</b></p> <p>24 Q. And so as to what he may have said</p> <p>25 or testified to, you're not aware?</p>



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<p>1 Castleman, ScD</p> <p>2 <b>A. That's right.</b></p> <p>3 Q. One thing I would ask you about</p> <p>4 him -- and Mr. Walker will correct me if I'm</p> <p>5 wrong, but one of the pieces of testimony he</p> <p>6 gave is that he was a railroad worker working</p> <p>7 next to Unarco, at the yards there that you're</p> <p>8 familiar with. And he observed individuals come</p> <p>9 out of Unarco in dust emanating out of the</p> <p>10 Unarco plants, specifically by the dumpster.</p> <p>11 And one of the things that the railroad workers</p> <p>12 did, they complained about it, and one of their</p> <p>13 supervisors went over to Unarco to complain.</p> <p>14 My only question to you is: Is</p> <p>15 that a good practice on the part of the railroad</p> <p>16 to go and complain to Unarco about this dust</p> <p>17 condition?</p> <p>18 <b>A. It sounds like it. But I mean,</b></p> <p>19 <b>this is all so vague, the way you're describing</b></p> <p>20 <b>it. What was the nature of the complaint? What</b></p> <p>21 <b>did they -- what knowledge did they express in</b></p> <p>22 <b>their -- in making their complaint? I mean, was</b></p> <p>23 <b>it just a nuisance they were talking about, or</b></p> <p>24 <b>was it something more serious that they were</b></p> <p>25 <b>raising with the people at Unarco? The question</b></p>	<p>1 Castleman, ScD</p> <p>2 and 1950s; is that a fair statement?</p> <p>3 <b>A. Yes. Not the only use, but it was</b></p> <p>4 <b>a major use.</b></p> <p>5 Q. Right. And of course their</p> <p>6 consumption or use of asbestos products would</p> <p>7 have dropped off substantially once they moved</p> <p>8 to diesel locomotives; is that also a fair</p> <p>9 statement?</p> <p>10 <b>A. Right.</b></p> <p>11 Q. And if, in fact, you'll assume for</p> <p>12 me that GM&amp;O was the first railroad to</p> <p>13 dieselize, you wouldn't criticize them for being</p> <p>14 the company to essentially substitute out an</p> <p>15 asbestos-containing locomotive with a diesel</p> <p>16 locomotive?</p> <p>17 <b>A. I'm sure that's not why they did</b></p> <p>18 <b>it, but no, I wouldn't criticize them.</b></p> <p>19 Q. You've seen the General Managers</p> <p>20 documents, of course, you refer to them in your</p> <p>21 book?</p> <p>22 <b>A. Right.</b></p> <p>23 Q. Is that the term you use, "General</p> <p>24 Managers"? Some people called them home</p> <p>25 documents?</p>
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<p>1 Castleman, ScD</p> <p>2 <b>is very vague. I just want to be cautious in</b></p> <p>3 <b>how I try to answer it.</b></p> <p>4 Q. I understand.</p> <p>5 The GM&amp;O Railroad, in the past</p> <p>6 you've indicated you don't know what those</p> <p>7 initials stand for.</p> <p>8 Do you today?</p> <p>9 <b>A. Initials for what?</b></p> <p>10 Q. The GM&amp;O Railroad.</p> <p>11 <b>A. Right. I don't --</b></p> <p>12 Q. Those initials, do you know what</p> <p>13 that stands for, sir?</p> <p>14 <b>A. No, I don't know now either.</b></p> <p>15 Q. You've been asked this in the past,</p> <p>16 but I understand -- strike that.</p> <p>17 Are you aware that GM&amp;O was the</p> <p>18 first railroad to be completely dieselized? By</p> <p>19 that I mean, steam locomotives retired and</p> <p>20 diesel locomotives took over?</p> <p>21 <b>A. I don't know if that's true or not.</b></p> <p>22 Q. If you assume for me -- well, first</p> <p>23 of all, your book does indicate that the lagging</p> <p>24 around steam locomotives is the primary usage of</p> <p>25 asbestos by American railroads back in the 1940s</p>	<p>1 Castleman, ScD</p> <p>2 <b>A. I think I know what you're talking</b></p> <p>3 <b>about.</b></p> <p>4 Q. We'll use "General Managers," if</p> <p>5 that's all right, Dr. Castleman.</p> <p>6 A few questions about that.</p> <p>7 Do you have any information that</p> <p>8 GM&amp;O Railroad was a member of the General</p> <p>9 Managers Association?</p> <p>10 <b>A. Not unless it's reflected in the</b></p> <p>11 <b>documents, I don't recall whether they were</b></p> <p>12 <b>listed or not.</b></p> <p>13 Q. Do you have any information of</p> <p>14 whether those documents, the occupational</p> <p>15 disease file, the General Managers documents,</p> <p>16 whatever you choose to call them, were ever</p> <p>17 given to the GM&amp;O?</p> <p>18 <b>A. I don't know.</b></p> <p>19 Q. In the past, you've indicated</p> <p>20 you've seen somewhere around 20 pages of the</p> <p>21 General Managers documents; is that about right?</p> <p>22 <b>A. I think so.</b></p> <p>23 Q. Do you believe you have any more or</p> <p>24 you just have the 15 to 20 pages?</p> <p>25 <b>A. I don't recall if I have any more</b></p>

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<p>1 <b>Castleman, ScD</b></p> <p>2 <b>or not. I don't think so.</b></p> <p>3 Q. Now, the General Managers documents</p> <p>4 were authored in part in response to the new</p> <p>5 Illinois law that was coming into play that you</p> <p>6 mentioned earlier today; is that right?</p> <p>7 MR. WALKER: Wait a minute.</p> <p>8 MR. KURZ: I can re-ask.</p> <p>9 MR. WALKER: Yes. I don't</p> <p>10 know who they are offered to.</p> <p>11 MR. KURZ: It was a poor</p> <p>12 question.</p> <p>13 BY MR. KURZ:</p> <p>14 Q. Was one of the topics discussed in</p> <p>15 the Occupational Disease Act -- and you'll agree</p> <p>16 with me, there are a lot of different topics</p> <p>17 talked about in there, a lot of different</p> <p>18 diseases and conditions?</p> <p>19 MR. WALKER: In the OD Act or</p> <p>20 in the General Managers documents?</p> <p>21 MR. KURZ: General Managers</p> <p>22 documents. Excuse me.</p> <p>23 MR. WALKER: I'm tending to</p> <p>24 object to this question because I</p> <p>25 would prefer one that started and</p>	<p>1 Castleman, ScD</p> <p>2 railroads at least believed that this law did</p> <p>3 not apply to them or would not apply to them?</p> <p>4 <b>A. Not that I can recall. It seems</b></p> <p>5 <b>like they were focused on dealing with it as</b></p> <p>6 <b>a -- a law that did apply to them.</b></p> <p>7 Q. Do you recall any references in the</p> <p>8 documents where they thought -- railroads</p> <p>9 specifically thought that they were different</p> <p>10 than the textile industries, and so the law</p> <p>11 would not apply to them?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Do you recall any discussion in the</p> <p>14 documents that because of the size of railroad</p> <p>15 shops in general, that being that they were</p> <p>16 considerably larger than most manufacturing</p> <p>17 facilities, that the restrictions that would be</p> <p>18 put in place by the statute should be lessened</p> <p>19 as to the railroad?</p> <p>20 <b>A. I don't recall anything about that.</b></p> <p>21 Q. You discuss in your -- just a few</p> <p>22 more questions, Doctor -- in your book, the nine</p> <p>23 recommendations that are both part of the</p> <p>24 General Managers disease file -- or occupational</p> <p>25 disease file, excuse me, and the AAR documents,</p>
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<p>1 Castleman, ScD</p> <p>2 stopped.</p> <p>3 Mark, you're nothing but a</p> <p>4 gentleman, but this one just has got</p> <p>5 my indicators buzzing so loud that</p> <p>6 even with my level of hearing, I can</p> <p>7 hear it.</p> <p>8 MR. KURZ: Let me back up and</p> <p>9 stick to one question.</p> <p>10 BY MR. KURZ:</p> <p>11 Q. Do you agree that the General</p> <p>12 Managers documents discuss a variety of</p> <p>13 different diseases?</p> <p>14 <b>A. Well, they certainly discuss</b></p> <p>15 <b>additional things to asbestosis.</b></p> <p>16 Q. That's all I was asking. All</p> <p>17 right.</p> <p>18 And do the documents tend to</p> <p>19 reflect -- that's a terrible phrase.</p> <p>20 Do the documents discuss this new</p> <p>21 law coming into place in Illinois?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And do you -- as you read through</p> <p>24 the documents, is there anything in those</p> <p>25 documents that indicates to you that the</p>	<p>1 Castleman, ScD</p> <p>2 correct, those nine steps?</p> <p>3 <b>A. Well, I have quoted verbatim the</b></p> <p>4 <b>nine-point program that was developed in the</b></p> <p>5 <b>General Managers Association documents.</b></p> <p>6 Q. And one of the things stated in</p> <p>7 those nine recommendations, I believe it's the</p> <p>8 last one, talks about publication of those</p> <p>9 warnings and of the hazards of asbestos, is that</p> <p>10 right, because of the capacity of claims, the</p> <p>11 capacity of potential for claims?</p> <p>12 <b>A. Well, as I recall it, it said</b></p> <p>13 <b>something about keeping this -- let me just look</b></p> <p>14 <b>at it. (Perusing document.)</b></p> <p>15 <b>All right. This is what it says:</b></p> <p>16 <b>"It is suggested that the above recommendations</b></p> <p>17 <b>be communicated directly to the foreman</b></p> <p>18 <b>involved. Publicity on the above might suggest</b></p> <p>19 <b>a making of claims."</b></p> <p>20 Q. My question to you, then, about</p> <p>21 that statement: Have you seen any documents in</p> <p>22 the occupational disease file that would reflect</p> <p>23 that the railroad's concern wasn't well-based</p> <p>24 claims; that is, a person truly with that</p> <p>25 disease process, but was rather as to the filing</p>

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<p>1 Castleman, ScD</p> <p>2 of false claims?</p> <p>3 <b>A. I don't think you can make</b></p> <p>4 <b>inferences based on -- I certainly don't think</b></p> <p>5 <b>you can make inferences of morality on the part</b></p> <p>6 <b>of the companies based on that statement.</b></p> <p>7 Q. I'm sorry. You certainly don't</p> <p>8 think, is that what you said?</p> <p>9 <b>A. Yes. I mean, I don't think that --</b></p> <p>10 <b>there's nothing in here that, you know, we're</b></p> <p>11 <b>perfectly willing to pay off legitimate claims,</b></p> <p>12 <b>we're just worried about false claims here. It</b></p> <p>13 <b>seems like they're --</b></p> <p>14 Q. Let me be clear.</p> <p>15 <b>A. They're speaking about the making</b></p> <p>16 <b>about the making of claims as a single entity of</b></p> <p>17 <b>concern, and it's consistent with other</b></p> <p>18 <b>corporate documents I've seen from the 1930s</b></p> <p>19 <b>expressing apprehensiveness about claims in</b></p> <p>20 <b>general.</b></p> <p>21 Q. Doctor, I did not mean to infer</p> <p>22 that those nine recommendations is where I'm</p> <p>23 drawing that inference.</p> <p>24 I'm asking if you've seen any other</p> <p>25 documents contained within the 400 and whatever</p>	<p>1 <b>Castleman, ScD</b></p> <p>2 <b>Railroad Trade Association Library in Washington</b></p> <p>3 <b>on L Street from the mid-'60s.</b></p> <p>4 <b>Whatever I have is available from</b></p> <p>5 <b>Albert Donnay in the railroad files. And there</b></p> <p>6 <b>hasn't been anything added in 20 years.</b></p> <p>7 Q. That was my next question. Very</p> <p>8 good.</p> <p>9 MR. KURZ: All right, Doctor,</p> <p>10 those are the questions I have.</p> <p>11 Thank you for your time.</p> <p>12 MR. WALKER: Are we done?</p> <p>13 Wonderful.</p> <p>14 MR. FISCHER: No, no. I have</p> <p>15 less than five minutes of follow-up</p> <p>16 on some questions that the railroad</p> <p>17 asked.</p> <p>18 THE WITNESS: Let me take a</p> <p>19 break.</p> <p>20 (Whereupon at 2:57 p.m., a</p> <p>21 recess was taken until 3:01 p.m.)</p> <p>22 (The deposition resumed with</p> <p>23 all parties present.)</p> <p>24</p> <p>25</p>
Page 138	Page 140
<p>1 Castleman, ScD</p> <p>2 number pages that comprise the occupational</p> <p>3 disease file that would lead to that conclusion.</p> <p>4 <b>A. I just don't know, you know, how</b></p> <p>5 <b>you can infer anything from this statement based</b></p> <p>6 <b>on other documents in the file. I just can't</b></p> <p>7 <b>think of anything else in the file that, so to</b></p> <p>8 <b>speak, picks up where this leaves off and</b></p> <p>9 <b>explains it in more detail. If there is such a</b></p> <p>10 <b>document, I would love to see it.</b></p> <p>11 Q. And finally, have you -- the AAR</p> <p>12 documents, you realize they run from the '20s</p> <p>13 through the '60s, I believe.</p> <p>14 What is the -- what do you have?</p> <p>15 How much do you possess, if you know?</p> <p>16 <b>A. You mean in my collection of</b></p> <p>17 <b>documents?</b></p> <p>18 Q. In your collection of documents,</p> <p>19 sir.</p> <p>20 <b>A. Well, I collect -- I have excerpts</b></p> <p>21 <b>from the ones that talk about asbestos from</b></p> <p>22 <b>1932, I think, until 1958 that we got at the</b></p> <p>23 <b>Interstate Commerce Commission Library.</b></p> <p>24 <b>And then there were a few others</b></p> <p>25 <b>that were found, some from the railroads, the</b></p>	<p>1 Castleman, ScD</p> <p>2 B A R R Y I. C A S T L E M A N, ScD, resumed and</p> <p>3 testified further as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. FISCHER: (Continued.)</p> <p>6 Q. You were asked some questions about</p> <p>7 1956 advertisements that described Kaylo as</p> <p>8 nontoxic, and you were asked some questions by</p> <p>9 Mr. Kurz about what a customer could have</p> <p>10 concluded, right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Have you ever spoken to anyone that</p> <p>13 saw that advertisement at any time prior to</p> <p>14 1970?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Have you ever spoken to anyone who</p> <p>17 was not a lawyer who ever saw that</p> <p>18 advertisement?</p> <p>19 <b>A. Well, I've never seen any -- I've</b></p> <p>20 <b>never talked to anybody who ever saw the</b></p> <p>21 <b>advertisements in Petroleum Engineer or that</b></p> <p>22 <b>flier that you're probably referring to. I</b></p> <p>23 <b>mean, these are things that were published in</b></p> <p>24 <b>the 1950s, and I haven't talked to anybody who</b></p> <p>25 <b>read either of those things.</b></p>

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<p>1 <b>Castleman, ScD</b></p> <p>2 Q. And I'm happy to do them together.</p> <p>3 The Petroleum Engineer article</p> <p>4 you're referring to is from 1952, right?</p> <p>5 <b>A. Right.</b></p> <p>6 Q. And then there's the advertisement</p> <p>7 from 1956?</p> <p>8 <b>A. Right.</b></p> <p>9 Q. And you're not aware of anyone who</p> <p>10 ever saw either of those things</p> <p>11 contemporaneously, right?</p> <p>12 <b>A. Right. I mean, these things were</b></p> <p>13 <b>all published by the time I was ten years old.</b></p> <p>14 Q. And you've never spoken or seen --</p> <p>15 let me put it into two separate questions.</p> <p>16 You've never spoken to any customer</p> <p>17 of Owens-Illinois or Owens Corning, for that</p> <p>18 matter, who saw that advertisement?</p> <p>19 <b>A. That's right.</b></p> <p>20 Q. And you never spoke to anybody</p> <p>21 about what conclusions they drew from either of</p> <p>22 those two uses of the word "nontoxic"?</p> <p>23 <b>A. True.</b></p> <p>24 MR. FISCHER: Those are all</p> <p>25 the questions I have. Thank you.</p>	<p>1</p> <p>2 C A P T I O N</p> <p>3</p> <p>4 The Deposition of BARRY CASTLEMAN, ScD, taken in the</p> <p>5 matter, on the date, and at the time and place set out</p> <p>6 on the title page hereof.</p> <p>7</p> <p>8 It was requested that the deposition be taken by the</p> <p>9 reporter and that same be reduced to typewritten form.</p> <p>10</p> <p>11 The Deponent will read and sign the transcript of said</p> <p>12 deposition.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 Castleman, ScD</p> <p>2 MR. MODESITT: I think we're</p> <p>3 done.</p> <p>4 (Whereupon at 3:03 p.m., the</p> <p>5 deposition was concluded.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 STATE OF _____:</p> <p>5 COUNTY/CITY OF _____:</p> <p>6</p> <p>7 Before me, this day, personally appeared</p> <p>8 BARRY CASTLEMAN, ScD, who, being duly sworn, states that</p> <p>9 the foregoing transcript of his Deposition, taken in the</p> <p>10 matter, on this date, and at the time and place set out</p> <p>11 on the title page hereof, constitutes a true and</p> <p>12 accurate transcript of said deposition.</p> <p>13</p> <p>14 _____</p> <p>15 BARRY CASTLEMAN, ScD</p> <p>16 SUBSCRIBED and SWORN to before me this _____ day of</p> <p>17 _____, 2010, in the jurisdiction aforesaid.</p> <p>18</p> <p>19 _____</p> <p>20 My Commission Expires Notary Public</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
BARRY CASTLEMAN, ScD

ANDRONIKI SAMARAS

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NO EXHIBITS